

1  
2 UNITED STATES DISTRICT COURT

3 IN THE DISTRICT OF IDAHO

4 - - - - - x Case No. 1:12-cv-00560-BLW  
5 SAINT ALPHONSUS MEDICAL CENTER - :  
6 NAMPA, INC., TREASURE VALLEY : Bench Trial  
7 HOSPITAL LIMITED PARTNERSHIP, SAINT : Witnesses:  
8 ALPHONSUS HEALTH SYSTEM, INC., AND : Nicholas J. Genna  
9 SAINT ALPHONSUS REGIONAL MEDICAL : David L. Peterman  
10 CENTER, INC., : Blaine Q. Petersen  
11 Plaintiffs, : Kathy D. Moore (Video)  
12 vs. : Gregory D. Orr (Video)  
13 : Christopher W. Roth (Video)  
14 ST. LUKE'S HEALTH SYSTEM, LTD., and :  
15 ST. LUKE'S REGIONAL MEDICAL CENTER, :  
16 LTD., :  
17 Defendants. :  
18 - - - - - : Case No. 1:13-cv-00116-BLW  
19 FEDERAL TRADE COMMISSION; STATE OF :  
20 IDAHO, :  
21 Plaintiffs, :  
22 vs. :  
23 :  
24 ST. LUKE'S HEALTH SYSTEM, LTD.; :  
25 SALTZER MEDICAL GROUP, P.A., :  
26 :  
27 Defendants. :  
28 - - - - - x

29 \* \* \* SEALED \* \* \*

30 REPORTER'S TRANSCRIPT OF PROCEEDINGS

31 before B. Lynn Winmill, Chief District Judge

32 Held on October 1, 2013

33 Volume 7, Pages 1096 to 1280

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1099

I N D E X

		PAGE:
	Courtroom open to the public.....	1101
	Courtroom closed to the public.....	1102
	Courtroom open to the public.....	1120
	Courtroom closed to the public.....	1158
	Courtroom remains closed to the public.....	1174
	Courtroom open to the public.....	1227
	Courtroom closed to the public.....	1236
	Courtroom remains closed to the public.....	1251
	Courtroom open to the public.....	1274
	Courtroom closed to the public.....	1277

PLAINTIFFS

W I T N E S S E S

		PAGE:
<b>GENNA, Nicholas</b>		
	Continued Cross-Examination by Mr. Stein.....	1102
	Redirect Examination by Mr. Powers.....	1107
	Recross-Examination by Mr. Stein.....	1118
<b>MOORE, Kathy D. (By video)</b>		
	.....	1274
<b>ORR, Gregory D. (By video)</b>		
	.....	1276
<b>PETERMAN, David L.</b>		
	Direct Examination by Mr. Su.....	1121
	Cross-Examination by Mr. Schafer.....	1186
	Redirect Examination by Mr. Su.....	1220
<b>PETERSEN, Blaine Q.</b>		
	Direct Examination by Mr. Ettinger.....	1229
	Cross-Examination by Mr. Stein.....	1259
<b>ROTH, Christopher W. (By video)</b>		
	.....	1277

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1100

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**PLAINTIFFS**

2

**E X H I B I T S**

3

		<b>ADMITTED</b>
4	<b>1963</b> Treasure Valley Hospital, 2012 Case Count by .... Physician (TVH60411)	<b>1117</b>
5	<b>1964</b> Treasure Valley Hospital, 2013 Case Count by .... Physician (TVH60412)	<b>1117</b>
6	<b>1965</b> TVSC-Nampa Physician Case Counts 2012 (TVH60413).	<b>1117</b>
	<b>1966</b> TVSC-Nampa Physician Case Counts 2013 (TVH60414).	<b>1117</b>
7	<b>1973</b> Handwritten Notes of Leadership Team Meeting, ... Kathy Moore (PLTs' Dep. Ex. 152; SLHS001189441-SLHS001189542)	<b>1276</b>

9

10

**DEFENDANTS**

11

**E X H I B I T S**

12

		<b>ADMITTED</b>
13	<b>2171</b> Saint Alphonsus Health System FY2013 - FY2015 ... Strategic Overview and Capital Planning (Def. Dep. Exh. 236; ALPH00021848)	<b>1259</b>
14	<b>2181</b> Email from C. Wilmes to J. Taylor and G. .... Fletcher, copying B. Sinclair, attaching Nampa South 12th Avenue Presentation for Board and MMC.pptx (Def. Dep. Exh. 248; SLHS001088924-25)	<b>1206</b>
15	<b>2230</b> Letter from D. Ettinger to S. Hirschfield re .... Micron Follow-up (Def. Dep. Exh. 353; BCI369253-63)	<b>1266</b>
16	<b>2636</b> Treasure Valley Hospital Detail Income..... Statement For Period Ending: August 31, 2013 (TVH60416)	<b>1119</b>
17	<b>2637</b> Selected TVH Financial and Case Information .....	<b>1119</b>

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<p>1101</p> <p>1 PROCEEDINGS</p> <p>2 October 1, 2013</p> <p>3 ***** COURTROOM OPEN TO THE PUBLIC *****</p> <p>4 THE CLERK: The court will now hear Civil Case</p> <p>5 12-560-S-BLW, Saint Alphonsus Medical Center, Nampa, Inc.,</p> <p>6 versus St. Luke's Health System for Day 7 of a bench trial.</p> <p>7 THE COURT: Good morning, Counsel.</p> <p>8 Mr. Greene, you filed a motion last night --</p> <p>9 MR. GREENE: Yes, Your Honor.</p> <p>10 THE COURT: -- requesting a continuance of the</p> <p>11 trial. Frankly, if you could go back to Washington and make</p> <p>12 some sense of what's going on back there, I would probably</p> <p>13 grant the motion, but unfortunately, I think that's probably</p> <p>14 beyond your substantial capabilities. And I think the needs</p> <p>15 of the trial are such and the impact on the parties and this</p> <p>16 community are such that I will have to deny that motion.</p> <p>17 MR. GREENE: Thank you, Your Honor.</p> <p>18 THE COURT: With that, Mr. Stein -- let me remind</p> <p>19 Mr. Genna, is it?</p> <p>20 THE WITNESS: Yes.</p> <p>21 THE COURT: You are still under oath. I'll remind</p> <p>22 you of that.</p> <p>23 Mr. Stein, you may resume your cross-examination.</p> <p>24 NICHOLAS GENNA,</p> <p>25 having been previously duly sworn to tell the whole truth,</p>	<p>1102</p> <p>1 testified as follows:</p> <p>2 CONTINUED CROSS-EXAMINATION</p> <p>3 BY MR. STEIN:</p> <p>4 Q. Mr. Genna, yesterday I believe you testified that</p> <p>5 utilization at Treasure Valley Hospital has dropped from the</p> <p>6 mid-80s in 2011 to around the mid-60s this year; is that</p> <p>7 correct?</p> <p>8 A. Yes.</p> <p>9 Q. Could the explanation for that be that --</p> <p>10 THE COURT: Just a moment. Do we have --</p> <p>11 Ms. Gearhart, do we have the evidence system? Is it on?</p> <p>12 THE CLERK: It is on, Your Honor.</p> <p>13 MR. STEIN: Your Honor, before -- let me -- I'll</p> <p>14 rephrase the question, but we should be in a closed session,</p> <p>15 continuing in a closed session.</p> <p>16 THE COURT: All right. And I assume everyone has</p> <p>17 been asked to leave that has not been advised. Essentially,</p> <p>18 that's everyone except people affiliated with Treasure</p> <p>19 Valley Hospital will be asked to leave the courtroom.</p> <p>20 ***** COURTROOM CLOSED TO THE PUBLIC *****</p> <p>21 THE COURT: And looking around, I assume everyone</p> <p>22 is in agreement that we've got the courtroom cleared.</p> <p>23 All right.</p> <p>24 BY MR. STEIN:</p> <p>25 Q. Mr. Genna, is it possible that the reason that</p>
<p>1103</p> <p>1 utilization has dropped is because the Saltzer surgeons and</p> <p>2 other investors in TVH has moved some of their cases to the</p> <p>3 Treasure Valley Surgery Center?</p> <p>4 A. That's a very small portion of the drop in</p> <p>5 utilization.</p> <p>6 Q. What portion is it?</p> <p>7 A. 5 percent, maybe.</p> <p>8 Q. How do you know that?</p> <p>9 A. Based on the history of their cases, based on the</p> <p>10 number of cases done at the surgery center, it's a very</p> <p>11 small portion of that utilization.</p> <p>12 Q. So the data that we looked at yesterday on</p> <p>13 utilization at the Treasure Valley Surgery Center, that's</p> <p>14 data that you had reviewed and are familiar with?</p> <p>15 A. I am, yes.</p> <p>16 Q. Okay. Now, when we left off yesterday, you were</p> <p>17 talking about Treasure Valley Hospital's financial</p> <p>18 condition, and you said, quote, with the two-time hits, the</p> <p>19 two-time windfalls we're going to do a little better than</p> <p>20 last year.</p> <p>21 A. Yes.</p> <p>22 Q. Could you define "a little better"?</p> <p>23 A. Compared to budget, maybe a million dollars ahead</p> <p>24 of budget, which is pretty close to prior year with a little</p> <p>25 increase.</p>	<p>1104</p> <p>1 Q. And a million dollars in terms of what metric?</p> <p>2 A. A million dollars in EBITDA.</p> <p>3 Q. EBITDA, that's E-B-I-T-D-A?</p> <p>4 A. Yes.</p> <p>5 Q. And could you just tell the court, what is EBITDA?</p> <p>6 A. Earnings before interest, depreciation, taxes, and</p> <p>7 amortization.</p> <p>8 Q. And that's a metric that TVH tracks as a measure</p> <p>9 of the health of Treasure Valley Hospital?</p> <p>10 A. As well as net income, yes.</p> <p>11 Q. Am I correct that there are certain key metrics</p> <p>12 that are included in Treasure Valley Hospital's income</p> <p>13 statements?</p> <p>14 A. There are lots of metrics.</p> <p>15 Q. Is one of those metrics net patient revenue per</p> <p>16 case?</p> <p>17 A. Yes.</p> <p>18 Q. What is net patient revenue per case?</p> <p>19 A. After gross charges and contractual write-offs and</p> <p>20 bad debt, you come up with net revenue. If you divide net</p> <p>21 revenue and the number of cases, you get net revenue per</p> <p>22 case.</p> <p>23 Q. And why is that an important metric for Treasure</p> <p>24 Valley Hospital?</p> <p>25 A. For several things. It tracks contracting</p>

<p style="text-align: right;">1105</p> <p>1 information, bad debt, write-offs, charity care. It also --</p> <p>2 the specialty mix and the payor mix of our cases, that's</p> <p>3 when a net revenue case can vary.</p> <p>4 Q. And so a rising net patient revenue per case means</p> <p>5 good things for Treasure Valley Hospital; correct?</p> <p>6 A. Yes.</p> <p>7 Q. One of the -- one of the things that we took a</p> <p>8 look at -- and we've got it up here on a chart -- is</p> <p>9 Treasure Valley Hospital's net patient revenue per case from</p> <p>10 2009 through the August 2013 income statement. And this</p> <p>11 shows net patient revenue going from 4,374 in 2009 up to</p> <p>12 5,050 in 2010, 5,176 in 2011, 5,826 in 2012. Am I correct,</p> <p>13 Mr. Genna, that as of August 2013, net patient revenue per</p> <p>14 case at Treasure Valley Hospital was actually up to 7,573?</p> <p>15 A. Again, that number is an estimate at this point in</p> <p>16 time. Those aren't audited financials. But, yes, that</p> <p>17 increase includes that windfall we talked about yesterday,</p> <p>18 more reimbursement from Medicare, a one-time yearly thing.</p> <p>19 Q. And that one-time reimbursement you said was</p> <p>20 about -- estimated to be about \$500,000?</p> <p>21 A. Yeah.</p> <p>22 Q. And you also testified there was a one-time</p> <p>23 \$1 million that came for the meaningful use money?</p> <p>24 A. Yes. Just under \$1 million.</p> <p>25 Q. And so those two items, the \$1 million for</p>	<p style="text-align: right;">1106</p> <p>1 meaningful use and the 500,000, would those be included in</p> <p>2 the EBITDA for Treasure Valley Hospital?</p> <p>3 A. I think they would, yes.</p> <p>4 Q. So on this next slide here, what we've got,</p> <p>5 Treasure Valley Hospital's EBITDA. And again, this comes</p> <p>6 from -- from a summary exhibit prepared based on Treasure</p> <p>7 Valley Hospital's financials, and it shows that in 2009, you</p> <p>8 had about \$6.5 million in EBITDA; 2010, up to \$9.7 million</p> <p>9 in EBITDA; 2011, \$11.5 million in EBITDA; and 2012, \$12.2</p> <p>10 million in EBITDA; is that right?</p> <p>11 A. That's what it says, yes.</p> <p>12 Q. Okay. And am I correct that as of August of 2013,</p> <p>13 you are pretty much already at the total EBITDA that you had</p> <p>14 for 2012 with four months left to go in the year?</p> <p>15 A. Again, this is estimated financials. Typically,</p> <p>16 in the fourth quarter, we factor in our cost report. Last</p> <p>17 year we took almost a \$3 million adjustment in the fourth</p> <p>18 quarter in December. So that number of 12 million could</p> <p>19 decrease substantially, based on cost report data.</p> <p>20 Q. But you are, as of August of 2013, at roughly the</p> <p>21 same EBITDA that you had last year for all of last year;</p> <p>22 right?</p> <p>23 A. Yes.</p> <p>24 MR. STEIN: No further questions.</p> <p>25 THE COURT: All right. Redirect.</p>
<p style="text-align: right;">1107</p> <p>1 MR. POWERS: Thank you, Your Honor.</p> <p>2 REDIRECT EXAMINATION</p> <p>3 BY MR. POWERS:</p> <p>4 Q. Mr. Genna, I want to review several of the charts</p> <p>5 that Mr. Stein reviewed with you yesterday.</p> <p>6 If we could, Andy, go to chart No. 8, reviewed</p> <p>7 yesterday, demonstrative No. 8, we -- what I would like to</p> <p>8 talk to you about, I would like to focus, Andy, on that</p> <p>9 line, "Total Saltzer surgeon volume throughout 2012," if we</p> <p>10 could. That's as good as you can do it? That's all right.</p> <p>11 Mr. Stein's charts, you recall yesterday, were based</p> <p>12 upon looking at numbers from January 2012 through August of</p> <p>13 2012.</p> <p>14 Do you recall that?</p> <p>15 A. I do.</p> <p>16 Q. And then he compared it to numbers from January</p> <p>17 2013 to August of 2013; correct?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. When we look at -- when we go beyond August</p> <p>20 2012, when we're looking at this particular chart, do we see</p> <p>21 a substantial drop-off in Saltzer case volume in September,</p> <p>22 October, November, and December of 2012?</p> <p>23 A. We see a big drop-off, yes.</p> <p>24 Q. Okay. And I'm going to give you some math here,</p> <p>25 and I would like you to do it in your head. If you need</p>	<p style="text-align: right;">1108</p> <p>1 calculators, just let us know. But it appears that the</p> <p>2 average case per month from January to August 2012, the</p> <p>3 average was 149 cases. And it appears that if you average</p> <p>4 the case per month from September through December, that</p> <p>5 average drops down to 57 cases per month. Does that</p> <p>6 look -- does that look accurate to you?</p> <p>7 A. It does, yes.</p> <p>8 Q. Okay. So let's -- Andy, let's move to chart</p> <p>9 No. 13 then, that we reviewed yesterday.</p> <p>10 Chart No. 13, presented by Mr. Stein yesterday to you,</p> <p>11 purported to take these numbers -- the total number of cases</p> <p>12 through August of -- August 31st of 2012 and through August</p> <p>13 31st of 2013. And I want to talk to you a little bit about</p> <p>14 the capacity of Treasure Valley Hospital and Treasure Valley</p> <p>15 Surgical Center. What's the capacity case count number for</p> <p>16 Treasure Valley Hospital?</p> <p>17 A. We're in the neighborhood of -- we could do</p> <p>18 upwards of 7200 cases per year.</p> <p>19 Q. Okay. Let's average that out to 7,000, okay?</p> <p>20 A. Mm-hmm.</p> <p>21 Q. And then, what's the capacity for Treasure Valley</p> <p>22 Surgical Center?</p> <p>23 A. 48- to 5,000 cases a year.</p> <p>24 Q. Okay. Is it fair to work with 5,000 as a number?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">1109</p> <p>1 <b>Q.</b> All right. So 12,000 would be 100 percent</p> <p>2 capacity at the two facilities combined; correct?</p> <p>3 <b>A.</b> Yes.</p> <p>4 <b>Q.</b> All right. So if we look at the utilization</p> <p>5 numbers for the two organizations combined in 2013, and we</p> <p>6 look at the right-hand bar chart, where my -- right hand to</p> <p>7 me, 2013, we see a total number of cases at the two</p> <p>8 facilities of 3,988; correct?</p> <p>9 <b>A.</b> Yes, through August.</p> <p>10 <b>Q.</b> Is my math accurate enough that that looks like</p> <p>11 it's about 40 percent utilization for the two facilities,</p> <p>12 combined?</p> <p>13 <b>A.</b> Yes.</p> <p>14 <b>Q.</b> All right. Then if we turn to chart No. 17, chart</p> <p>15 No. 17 is a chart that does a number of things. It compares</p> <p>16 total cases based on that January to August number in 2012</p> <p>17 to the total cases in 2013. And what I would like to talk</p> <p>18 about is the -- what we know about the referral base for</p> <p>19 these total cases in 2012 and 2013. We know, don't we, that</p> <p>20 the referral base for Saltzer surgeons in the fall of 2012</p> <p>21 shifted; correct?</p> <p>22 <b>A.</b> Yes.</p> <p>23 <b>Q.</b> Okay. We know that the Saltzer PCP referrals went</p> <p>24 down; is that right?</p> <p>25 <b>A.</b> Yes.</p>	<p style="text-align: right;">1110</p> <p>1 <b>Q.</b> And we know that referrals from Saint Alphonsus,</p> <p>2 through the Saint Alphonsus system for the Saltzer surgeons,</p> <p>3 went up; correct?</p> <p>4 <b>MR. STEIN:</b> Objection. Leading and foundation.</p> <p>5 <b>THE COURT:</b> I'm going to give counsel some leeway</p> <p>6 here to move us through this.</p> <p>7 <b>MR. POWERS:</b> Thank you.</p> <p>8 <b>THE COURT:</b> The objection is overruled.</p> <p>9 Proceed.</p> <p>10 <b>BY MR. POWERS:</b></p> <p>11 <b>Q.</b> So we know that the Saltzer surgeon referral base</p> <p>12 from the Saint Al's system went up in the fall of 2012;</p> <p>13 correct?</p> <p>14 <b>A.</b> It did increase.</p> <p>15 <b>Q.</b> Okay. And this particular chart, chart No. 17,</p> <p>16 does not reflect, either in 2012 or 2013, the referral base</p> <p>17 for the Saltzer surgeons cases performed at Treasure Valley</p> <p>18 Hospital and Treasure Valley Surgical Center. It doesn't</p> <p>19 reflect that, does it?</p> <p>20 <b>A.</b> Correct.</p> <p>21 <b>Q.</b> All right. Then let's move to chart No. 25, if we</p> <p>22 could.</p> <p>23 And Mr. Stein asked you a number of questions yesterday</p> <p>24 surrounding the combined entities of Treasure Valley</p> <p>25 Hospital and Treasure Valley Surgery Center. Now, I want to</p>
<p style="text-align: right;">1111</p> <p>1 talk a little bit about the difference between Treasure</p> <p>2 Valley Surgery Center and Treasure Valley Hospital. Okay?</p> <p>3 Let me ask you a few questions.</p> <p>4 Define for the court, if you would, the structure of</p> <p>5 Treasure Valley Surgery Center in Nampa, the ownership</p> <p>6 structure.</p> <p>7 <b>A.</b> It is a 51 percent ownership between Saint</p> <p>8 Alphonsus and SCA. I think it's 26 and 25.</p> <p>9 <b>Q.</b> 26 for who?</p> <p>10 <b>A.</b> Saint Al's.</p> <p>11 <b>Q.</b> And 25 for SCA?</p> <p>12 <b>A.</b> Yes.</p> <p>13 <b>Q.</b> And then what's the remainder interest of 49</p> <p>14 percent?</p> <p>15 <b>A.</b> It's 49 percent owned by physicians. The --</p> <p>16 <b>Q.</b> And what's the breakdown of that physician</p> <p>17 ownership?</p> <p>18 <b>A.</b> The doctors involved in Treasure Valley Hospital</p> <p>19 own approximately 24 percent of the additional volume, and</p> <p>20 then 59 -- well, 40 -- 40 docs own the additional 25</p> <p>21 percent, just under 40.</p> <p>22 <b>Q.</b> Okay. So 40 doctors other than Treasure Valley</p> <p>23 Hospital doctors own the other 25 percent of Treasure Valley</p> <p>24 Surgery Center; is that right?</p> <p>25 <b>A.</b> And of that other percentage, there is</p>	<p style="text-align: right;">1112</p> <p>1 approximately 59 active physicians at Treasure Valley</p> <p>2 Surgery Center that aren't active at Treasure Valley</p> <p>3 Hospital.</p> <p>4 <b>Q.</b> Let's answer my question.</p> <p>5 <b>A.</b> Sorry. Yes.</p> <p>6 <b>Q.</b> Now, I want to talk about -- I want you to tell us</p> <p>7 the specialties, the various specialties that make up that</p> <p>8 25 percent physician ownership that does not include</p> <p>9 Treasure Valley Hospital surgeons.</p> <p>10 <b>A.</b> It's -- it includes ophthalmology, urology,</p> <p>11 gastroenterology, and -- gastroenterology, pain management.</p> <p>12 <b>Q.</b> And where are those physicians, those particular</p> <p>13 physicians located in the Treasure Valley? Where do they</p> <p>14 come from?</p> <p>15 <b>A.</b> Mostly Canyon County, including Fruitland and</p> <p>16 Payette, but mostly Canyon County.</p> <p>17 <b>Q.</b> But some from Boise; correct? Some of the GI</p> <p>18 doctors?</p> <p>19 <b>A.</b> Yeah. Boise, Meridian, yes.</p> <p>20 <b>Q.</b> And now, help the court understand the difference</p> <p>21 in the types of surgery performed at Treasure Valley Surgery</p> <p>22 Center in Nampa versus Treasure Valley Hospital.</p> <p>23 <b>A.</b> Again, Treasure Valley Surgery Center is</p> <p>24 completely an outpatient surgery center, so ophthalmopathy,</p> <p>25 GI, pain management. Many of those are not even with full</p>



<p style="text-align: right;">1113</p> <p>1 anesthesia; you know, maybe conscious sedation. They're a</p> <p>2 -- more outpatient-surgery-center-type cases, lower net</p> <p>3 revenue per case.</p> <p>4 Q. Cases where you don't anticipate or should not</p> <p>5 anticipate an overnight stay?</p> <p>6 A. Correct.</p> <p>7 Q. So getting back to chart 25, Mr. Stein did a</p> <p>8 number of projections, and if you look at the top -- in the</p> <p>9 top right-hand corner of chart No. 25, you see an annualized</p> <p>10 projection of 5,982 cases if you combine the two facilities;</p> <p>11 correct?</p> <p>12 A. Yes.</p> <p>13 Q. If, in fact, that occurs in 2013, if I do my math</p> <p>14 right, that's approximately a 50 percent utilization of the</p> <p>15 combined facilities if you're looking at the combined</p> <p>16 facilities; correct?</p> <p>17 A. Just a fraction under, yes.</p> <p>18 Q. And Mr. Stein asked you some questions yesterday</p> <p>19 about the combined financial status of the two entities, and</p> <p>20 you responded that if you combine Treasure Valley Surgery</p> <p>21 Center and the losses they're experiencing in 2013 with the</p> <p>22 profit and net income of Treasure Valley Hospital, that if</p> <p>23 you want to look at the combined system, that the -- the</p> <p>24 income for 2013 will be just a bit above what you did in</p> <p>25 2012. Is that accurate?</p>	<p style="text-align: right;">1114</p> <p>1 A. It would actually be less.</p> <p>2 Q. Then 2012?</p> <p>3 A. Yes. Our revenue would go down.</p> <p>4 Q. And you know that based upon anticipated losses at</p> <p>5 Treasure Valley Surgery Center?</p> <p>6 A. Actual anticipated losses.</p> <p>7 Q. What are those?</p> <p>8 A. Year to date, since the facility has been open, I</p> <p>9 think it's 2.6 million or so in losses. This year it's a</p> <p>10 little over 1.8 million below budget.</p> <p>11 Q. In 2013?</p> <p>12 A. Through August.</p> <p>13 Q. And that's Treasure Valley Surgery Center?</p> <p>14 A. Yes.</p> <p>15 MR. POWERS: Your Honor, at this point -- well,</p> <p>16 let's see. Do I have any other questions? I don't think I</p> <p>17 do, Your Honor. At this point, I would like to offer some</p> <p>18 of the exhibits we have reviewed with Mr. Genna into</p> <p>19 evidence.</p> <p>20 THE COURT: Which exhibits?</p> <p>21 MR. POWERS: Yes, Your Honor. I would like to</p> <p>22 offer Exhibits -- well, the demonstratives that -- I would</p> <p>23 like to offer the demonstratives we reviewed.</p> <p>24 THE COURT: Well, I was thinking how we're going</p> <p>25 to identify demonstratives. I don't know that they need to</p>
<p style="text-align: right;">1115</p> <p>1 be admitted as exhibits since they're only used to summarize</p> <p>2 other testimony or to illustrate testimony.</p> <p>3 Counsel, I wonder if -- I am assuming when you've</p> <p>4 referred to slide No. 15, that there is some designation and</p> <p>5 that we can keep those separately numbered. I'm -- perhaps</p> <p>6 just note for the record that those will be considered by</p> <p>7 the court as demonstratives and of course that will apply as</p> <p>8 well for all of the plaintiffs' witnesses and the defense</p> <p>9 witnesses, as well.</p> <p>10 MR. POWERS: I'm mindful of Your Honor stating</p> <p>11 yesterday that you would look at the demonstratives in this</p> <p>12 case. And the defense does have their demonstratives</p> <p>13 numbered, and we've been able to refer to them as such.</p> <p>14 Unfortunately, I think the five demonstratives we utilized</p> <p>15 yesterday don't have particular numbers. They do have</p> <p>16 titles that I could mention for purposes --</p> <p>17 THE COURT: We need to make a record, of course.</p> <p>18 MR. POWERS: Right.</p> <p>19 THE COURT: We'll need to, at some point, as part</p> <p>20 of the record, put together all of the demonstratives. If</p> <p>21 you want to go ahead and identify them briefly for the</p> <p>22 record and, perhaps on the fly even, we can -- Mr. Stein,</p> <p>23 were your demonstratives assigned just a number? I think it</p> <p>24 was 1 through 15 or something?</p> <p>25 MR. STEIN: They were. They're not consecutive</p>	<p style="text-align: right;">1116</p> <p>1 because we skipped some. So I'll tell you what, we'll go</p> <p>2 back and take a look at that issue and make sure that we</p> <p>3 have a uniform set and that they're numbered in the way that</p> <p>4 they were -- have the same numbers by which we referred to</p> <p>5 them.</p> <p>6 THE COURT: All right.</p> <p>7 MR. POWERS: We'll do the same, Your Honor.</p> <p>8 THE COURT: All right. I think at some point,</p> <p>9 then, you can -- either by filing with CM/ECF or a</p> <p>10 submission to the court -- can set forth which witnesses and</p> <p>11 what the demonstrative names and numbers are so that we keep</p> <p>12 the record straight.</p> <p>13 All right.</p> <p>14 MR. STEIN: Your Honor, I just have brief cross.</p> <p>15 THE COURT: You may. Very brief.</p> <p>16 MR. POWERS: Your Honor, I've got some exhibits</p> <p>17 that I wanted to offer.</p> <p>18 THE COURT: Oh, other exhibits?</p> <p>19 MR. POWERS: Yes, in addition to those</p> <p>20 demonstratives. We would offer Plaintiffs' Exhibit 1655,</p> <p>21 which is Treasure Valley Hospital 2012 physician case count.</p> <p>22 THE COURT: Just a moment. Let me -- I have that</p> <p>23 as admitted. If they were stipulated to, I admitted all</p> <p>24 those exhibits by -- on September 27th, which I think was</p> <p>25 Thursday of last week.</p>

<p style="text-align: right;">1117</p> <p>1 MR. POWERS: Very good, Your Honor. We would</p> <p>2 offer Treasure Valley Hospital Exhibit 1963.</p> <p>3 THE COURT: Like -- oh, that was objected to as</p> <p>4 being untimely. Is that withdrawn?</p> <p>5 MR. STEIN: We'll withdraw that objection.</p> <p>6 Actually, I was -- for 1963, -64, -65, and -66, we'll</p> <p>7 withdraw our objections.</p> <p>8 THE COURT: And you're offering them, Mr. Powers?</p> <p>9 MR. POWERS: Yes, Your Honor.</p> <p>10 THE COURT: All right. Those exhibits will be</p> <p>11 admitted, 1963 through 66.</p> <p>12 (Plaintiffs' Exhibit Nos. 1963, 1964, 1965, and 1966</p> <p>13 admitted.)</p> <p>14 MR. POWERS: Let me just double-check here,</p> <p>15 Your Honor. I'm sorry.</p> <p>16 We'll work on the demonstratives, Your Honor, and make</p> <p>17 sure that we've got those identified for the court. Thank</p> <p>18 you.</p> <p>19 THE COURT: Thank you.</p> <p>20 Mr. Stein, briefly.</p> <p>21 Counsel, unlike some judges who allow direct, cross,</p> <p>22 and redirect, and that's it, I generally will allow up to a</p> <p>23 recross and a final redirect, and then that's it. So I</p> <p>24 don't like -- I mean, ping-pong is okay to some point, but</p> <p>25 not -- so I'm giving you some leeway, but go ahead.</p>	<p style="text-align: right;">1118</p> <p>1 RECROSS-EXAMINATION</p> <p>2 BY MR. STEIN:</p> <p>3 Q. Mr. Genna, the drop-off in surgeries that TVH</p> <p>4 started experiencing in August of 2012, that coincided in</p> <p>5 time with the opening of the Treasure Valley Surgery Center;</p> <p>6 correct?</p> <p>7 A. No. It actually coincided -- it started in June</p> <p>8 with the St. Luke's Saltzer deal.</p> <p>9 Q. Well, Mr. Powers showed you numbers in September,</p> <p>10 October, November, December. That was right after the</p> <p>11 surgery center opened; right?</p> <p>12 A. I think they performed like one case in August and</p> <p>13 two or three in September, something like that. But they</p> <p>14 didn't actually get started until almost 2013.</p> <p>15 Q. And while the surgery center -- well, strike that.</p> <p>16 While the Saltzer physicians are only seven or so of</p> <p>17 the 40 doctors -- 40 other doctors who are owners in the</p> <p>18 surgery center, the Saltzer surgeons are doing over half the</p> <p>19 volume at the surgery center; isn't that right?</p> <p>20 A. I think it's under half, yes.</p> <p>21 Q. Are you sure about that?</p> <p>22 A. I think it's right about 50 percent or just under.</p> <p>23 It looked like it, according to your slide it was</p> <p>24 exact -- you had 542 versus 1,084, and I think that's about</p> <p>25 exactly half.</p>
<p style="text-align: right;">1119</p> <p>1 MR. STEIN: Your Honor, I don't have any further</p> <p>2 questions for Mr. Genna, but I would also move to introduce</p> <p>3 a few exhibits.</p> <p>4 THE COURT: Yes.</p> <p>5 MR. STEIN: 2118. This was an email that I showed</p> <p>6 Mr. Genna yesterday.</p> <p>7 THE COURT: I have it as already admitted.</p> <p>8 MR. STEIN: Okay. And then 2636 and 2637, these</p> <p>9 are two new exhibits that we had prepared based on the</p> <p>10 information that was produced by Treasure Valley Hospital,</p> <p>11 and I believe we have a stipulation to their admission.</p> <p>12 THE COURT: Is that correct?</p> <p>13 MR. POWERS: Yes, Your Honor. Let me take a quick</p> <p>14 look.</p> <p>15 Yes, Your Honor, no objection.</p> <p>16 THE COURT: 2636 and -37 will be admitted.</p> <p>17 (Defendants' Exhibit Nos. 2636 and 2637 admitted.)</p> <p>18 THE COURT: All right. Any re- redirect?</p> <p>19 MR. POWERS: No, Your Honor.</p> <p>20 THE COURT: You may step down. Thank you very</p> <p>21 much, Mr. Genna.</p> <p>22 THE WITNESS: Thank you, sir.</p> <p>23 THE COURT: Plaintiffs may call their next</p> <p>24 witness.</p> <p>25 MR. SU: Good morning, Your Honor. Henry Su from</p>	<p style="text-align: right;">1120</p> <p>1 the Federal Trade Commission.</p> <p>2 THE COURT: Yes.</p> <p>3 MR. SU: Plaintiffs call Dr. David Peterman to the</p> <p>4 stand.</p> <p>5 THE COURT: All right.</p> <p>6 MR. SINCLAIR: Is this AEO?</p> <p>7 MR. SU: Your Honor, what we're going to do with</p> <p>8 Dr. Peterman is -- I've worked it out so that at least a</p> <p>9 part of my direct examination can be held in open session,</p> <p>10 and then there will be -- the second half would be in closed</p> <p>11 session. And my understanding from opposing counsel was</p> <p>12 that their cross and direct will be closed, as well.</p> <p>13 THE COURT: All right. Very good. Thank you,</p> <p>14 Mr. Su.</p> <p>15 Counsel, just so we're clear, the courtroom will be</p> <p>16 open now?</p> <p>17 MR. SU: Yes, Your Honor, that's correct.</p> <p>18 THE COURT: Would you -- perhaps, that's taken</p> <p>19 care of itself. Everyone is coming in, so.</p> <p>20 ***** COURTROOM OPEN TO THE PUBLIC *****</p> <p>21 THE COURT: Dr. Peterman, please step before</p> <p>22 Ms. Gearhart, be sworn as a witness, and then follow her</p> <p>23 directions from there.</p> <p>24 DAVID L. PETERMAN,</p> <p>25 having been first duly sworn to tell the whole truth,</p>

1121

1 testified as follows:

2 THE CLERK: Please take a seat in the witness

3 stand.

4 Please state your complete name and spell your name for

5 the record.

6 THE WITNESS: David L. Peterman, P-E-T-E-R-M-A-N.

7 THE COURT: You may inquire.

8 MR. SU: All right. Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY MR. SU:

11 Q. Dr. Peterman, good morning.

12 A. Good morning. This is someone else's work.

13 THE COURT: Thank you.

14 MR. METCALF: I'll take that.

15 THE COURT: And the calculator, glasses, reading

16 glasses and a calculator, so we'll need to get that back

17 to -- oh, Mr. Genna is there. Perhaps, we can get that to

18 him.

19 MR. SU: And actually, Your Honor, we are handing

20 Mr. Metcalf a binder, a couple of binders for use with this

21 witness.

22 THE COURT: All right.

23 BY MR. SU:

24 Q. So good morning, Dr. Peterman.

25 A. Good morning.

1123

1 A. Yes.

2 Q. Briefly, could you tell the court what is Primary

3 Health Medical Group?

4 A. Well, Primary Health Medical Group is

5 a -- essentially, a primary care multispecialty group,

6 primary-care-emphasized multispecialty group. We have,

7 currently, 13 clinics, and we have family practice,

8 pediatrics, OBGYN, sports medicine, occupational medicine,

9 dermatology, ENT, and urgent care, and family practice. I

10 don't know if I mentioned that.

11 Q. And you said you had 13 clinic locations

12 currently?

13 A. Yes.

14 Q. Are there -- are there different clinics for

15 different specialties?

16 A. Yes. So 11 of the clinics are what we call a

17 "combination clinic," and in our combination clinics we have

18 urgent care, in which patients can be seen without an

19 appointment; and then on the other side of the combination

20 clinics is your traditional, appointment-based family

21 practice.

22 Q. And that accounts for 11 of the 13 clinics, so

23 what about the other two clinics?

24 A. The other two are my pediatric practice and the

25 OBGYN practice.

1122

1 Q. Before I begin, I just wanted to let you know that

2 I'll be asking you some questions, and it may be that the

3 judge may have questions for you, so please answer the

4 judge's questions as well, if he has any.

5 What do you do for a living?

6 A. I am a pediatrician.

7 Q. And are you in a solo practice or a medical group?

8 A. Well, I'm part of a medical group. I am part of

9 Primary Health Medical Group.

10 Q. And where is your office located?

11 A. Well, I have a clinical office on Emerald Street

12 where I practice part-time pediatrics, and then I have an

13 administrative office where I'm also -- have an

14 administrative position as president of Primary Health

15 Medical Group.

16 Q. So you said you have an office on Emerald Street.

17 Is that in Boise?

18 A. Yes. 6348 Emerald, Boise, Idaho.

19 Q. And that would be where you practice pediatrics?

20 A. Yes.

21 Q. How long have you practiced medicine in Boise?

22 A. Yeah. I've practiced since 1980.

23 Q. So that's 33 years?

24 A. Thank you for reminding me, Henry.

25 Q. Have you always practiced pediatrics?

1124

1 Q. Where is the OBGYN practice located?

2 A. Oh, it is -- I believe it's near the corner of

3 Idaho and 1st Street. I'm not going to have that specific

4 address. Close to St. Luke's downtown.

5 Q. In general, where are -- where are the clinics

6 located?

7 A. So the combination clinics are in a sense, follow

8 the I-84 corridor. We're in Boise, Meridian, Eagle, Nampa,

9 and Caldwell.

10 Q. And are there cities or communities where there

11 are more than one Primary Health clinic?

12 A. Yes. Yes.

13 Q. Which ones?

14 A. So we have more than one clinic in Boise, more

15 than one clinic in Meridian, and more than one clinic in

16 Nampa.

17 Q. Approximately how many physicians does Primary

18 Health currently have on staff?

19 A. So we have 30 physicians and 26 mid-levels. And

20 when I use the term "mid-level" I'm referencing nurse

21 practitioners and physician's assistants.

22 Q. You mentioned that in addition to being a

23 pediatrician for Primary Health, you also have an

24 administrative function. Could you please tell the court

25 about what you do as an administrator?

<p style="text-align: right;">1125</p> <p>1       <b>A.</b> Yes. Well, I'm the president of Primary Health  2 Medical Group, and in that position I am essentially the CEO  3 of the company, and I have the -- what I would describe as  4 typical responsibilities of the CEO of a company.  5       <b>Q.</b> So can you give me some examples? What are you  6 involved in in terms of administration?  7       <b>A.</b> Well, again, I tried to learn to not get involved  8 in the day-to-day operations. I have very good people that  9 do that. But my role is -- is to set the policy, the  10 strategy, make sure that we're financially sound, but most  11 importantly, what has made Primary Health so successful is  12 we believe we give the highest quality of care, and that has  13 to be front and center to everything I do. At the end of  14 the day, whatever decision I make, it has to be made in the  15 context that this will give the best care to our patients.  16       <b>Q.</b> So could you give the court an example of how  17 you're involved as an -- in your administrative function  18 with the quality of care that Primary Health delivers to its  19 patients.  20       <b>A.</b> Well, so, without getting into all the details,  21 we're -- we were, originally, part of an insurance company,  22 which is obviously data driven. So our roots are based in  23 data. And it is my belief that you can give the best  24 quality of care if -- again, if it's based on data.  25       And so in terms of the decisions we've made and</p>	<p style="text-align: right;">1126</p> <p>1 I've made, as a company, is that whatever we're measuring,  2 whatever way in which -- again, we're trying to get the best  3 outcome for our patients -- it's based on our ability to  4 gather data, look at it, and figure out how can we improve  5 and how can we do a better job. So within that context, as  6 an example, we are currently measuring 18 different  7 nationally-recognized quality indicators. And, again, we  8 use that to measure ourselves against others in the country  9 and to measure -- to look at ourselves as to how we can  10 improve.  11       <b>Q.</b> In terms of -- in terms of the -- you said you  12 also get involved in strategy. Does that -- what does that  13 include? For instance, if Primary Health is considering  14 opening another clinic location, is that -- what would your  15 involvement be with that?  16       <b>A.</b> Well, we're -- yeah, I mean, there are two parts  17 to this. I mean, again, our -- we're here to serve the  18 needs of the community -- that's what made us successful --  19 and to be responsive to what the community needs in terms of  20 healthcare. And in that regard, again, we are able to look  21 at our own internal data in terms of visits and the  22 population in Southwest Idaho, and that helps us to figure  23 or to consider where we might build a new clinic.  24       <b>Q.</b> And I'm asking about you, personally. What is the  25 kind of involvement that you provide in that type of</p>
<p style="text-align: right;">1127</p> <p>1 decision-making?  2       <b>A.</b> Oh. Well, with that I would be very directly  3 involved. So it may be those who report to me would be  4 collecting the data, putting it together, and then it's up  5 to me to sift through that. And then again, the way our  6 company operates -- I guess the way I would describe it is  7 we are more horizontal than vertical. There are three types  8 of decisions any business manager needs to make: One is, in  9 a sense, he doesn't care which way the decision is; two, he  10 feels he has to get the consensus so that the whole team  11 agrees with him; or the third, it's my way, and we're going  12 to do it that way.  13       Honestly, I can't recall that I've had a decision  14 where I said, "It's my way." I believe the approach is for  15 me to build consensus, and so that's what my role is, is if  16 I feel we need to go in a certain direction, then I seek the  17 advice of others, and then build consensus.  18       <b>Q.</b> As president and CEO of Primary Health, are you  19 involved at all in the recruiting and hiring of physicians?  20       <b>A.</b> Yes, I am.  21       <b>Q.</b> And how are you involved?  22       <b>A.</b> Well, that's one of my primary responsibilities.  23 So I interview every candidate that we hire that's a  24 provider, and I'm directly involved, ultimately, in saying  25 whether we offer them a job or do not offer them a job. I'm</p>	<p style="text-align: right;">1128</p> <p>1 also directly involved with the decision that says should we  2 hire more providers or should we not hire more providers.  3       <b>Q.</b> You mentioned to the court that Primary Health had  4 its origins in an insurance company. Could you tell the  5 court a little bit more about how -- with the current  6 Primary Health Medical Group, how it came into being.  7       <b>A.</b> Well, Primary Health, Inc., was an insurance  8 company that existed, and the thinking at that time was that  9 as part of the insurance company, they would have a medical  10 group that sort of would wrap around the insurance product.  11 For a number of different reasons, the insurance company was  12 not as successful as the venture capitalists who invested in  13 it wanted it to be, and there was also some challenges as  14 relates to the medical group.  15       And in 2007, the board of directors of Primary  16 Health, Inc., were considering selling the medical group,  17 and it was at that point in 2007 that the providers, a  18 subset of the providers purchased the medical group.  19       <b>Q.</b> When you say "providers," you mean the physicians  20 on staff?  21       <b>A.</b> Yeah. It was the physicians, mid-levels, and key  22 managers.  23       <b>Q.</b> And are those who were involved in that buyout,  24 are they now shareholders in Primary Health?  25       <b>A.</b> Yes. Yes.</p>



<p style="text-align: right;">1129</p> <p>1 <b>Q.</b> Has Primary Health, as a medical group, received</p> <p>2 any recognition for its practice?</p> <p>3 <b>A.</b> Yes.</p> <p>4 <b>Q.</b> What kind of recognition have you gotten? If you</p> <p>5 could give the court some --</p> <p>6 <b>A.</b> This could take an hour. You don't want to give</p> <p>7 me an open-ended chance to brag about Primary Health Medical</p> <p>8 Group, but I will try and be succinct.</p> <p>9 So let me start with, there is an organization</p> <p>10 called MGMA, which is the Medical Group Management</p> <p>11 Association of the United States of America, I guess it is.</p> <p>12 And MGMA, I believe, has about 25,000 independent medical</p> <p>13 groups that are members of the organization. Every year</p> <p>14 they give an award for -- or they recognize the top 10 to 5</p> <p>15 percent of groups for various categories. Then within that,</p> <p>16 they select out, out of the -- so 25,000, then if you take,</p> <p>17 obviously, 10 percent, get down to 2500, then out of that</p> <p>18 they take only eight groups and feature them as the very</p> <p>19 best. And we were -- we were one that was featured.</p> <p>20 <b>Q.</b> Do you remember what year that was?</p> <p>21 <b>A.</b> I want to say 2010, I think. Did you want me to</p> <p>22 continue on other?</p> <p>23 <b>Q.</b> Well, what was -- what was that -- why were you</p> <p>24 singled out as one of the top eight?</p> <p>25 <b>A.</b> Well, that was specifically our ability to respond</p>	<p style="text-align: right;">1130</p> <p>1 to the economy and our ability to continue to be a</p> <p>2 productive business, avoid layoffs of our personnel, and to</p> <p>3 continue the serve the needs of the community, and to</p> <p>4 respond to, again, a community that maybe couldn't afford</p> <p>5 healthcare, but we, in a sense, made ourselves available.</p> <p>6 <b>Q.</b> All right. Thank you.</p> <p>7 Does Primary Health belong to any provider networks?</p> <p>8 <b>A.</b> Yes. We belong to -- well, I would almost say</p> <p>9 we -- our approach is to belong to every provider network so</p> <p>10 that it allows access for the community.</p> <p>11 <b>Q.</b> So can you give me some examples of --</p> <p>12 <b>A.</b> Yeah, yes. So we're members of Blue Cross's</p> <p>13 various networks; we're members of Regence Blue Shield</p> <p>14 network; we're members of Idaho Physicians Network; we're a</p> <p>15 member of Saint Alphonsus Health Alliance network; we're</p> <p>16 members of the Select Network. I would add on to that that</p> <p>17 we accept over 800 different insurance products. So I'm</p> <p>18 sure I have left off some of the networks.</p> <p>19 <b>Q.</b> What's the Select Network that you just mentioned?</p> <p>20 <b>A.</b> Select is the network that is associated with</p> <p>21 St. Luke's hospital and their current insurance product,</p> <p>22 which I think is called SelectHealth.</p> <p>23 <b>Q.</b> You mentioned both the St. Luke's Select Network</p> <p>24 and the Saint Alphonsus Health Alliance. Does Primary</p> <p>25 Health have any kind of affiliation with either Saint</p>
<p style="text-align: right;">1131</p> <p>1 Alphonsus or St. Luke's?</p> <p>2 <b>A.</b> I'm not sure --</p> <p>3 <b>Q.</b> Well, let me be specific. Do the physicians at</p> <p>4 the Primary Health, are they under any kind of contractual</p> <p>5 relationship with either Saint Alphonsus or St. Luke's?</p> <p>6 <b>A.</b> Well, so as a member of any network -- Regence,</p> <p>7 IPN, Idaho Physicians Network, Select -- we sign a contract,</p> <p>8 as we would with any network. So we have signed the basic</p> <p>9 contracts for Select and Saint Alphonsus Alliance.</p> <p>10 <b>Q.</b> Are there any employment relationships or --</p> <p>11 <b>A.</b> No.</p> <p>12 <b>Q.</b> -- between the Primary Health physicians in either</p> <p>13 Saint Alphonsus or St. Luke's?</p> <p>14 <b>A.</b> No. No.</p> <p>15 <b>Q.</b> You mentioned the various networks. Do the</p> <p>16 employees of Primary Health serve on any --</p> <p>17 <b>A.</b> Oh.</p> <p>18 <b>Q.</b> -- boards or committees?</p> <p>19 <b>A.</b> Yes. Yes. So, again, this is -- this is an</p> <p>20 expanded list. So one of our physicians has served on the</p> <p>21 board of Idaho Physicians Network. Another of our</p> <p>22 physicians has served on some of the committees related to</p> <p>23 quality with the Blue Cross network. Another of our</p> <p>24 physicians serves on a committee with Select that has to do</p> <p>25 with diabetes care. Our executive director serves on an</p>	<p style="text-align: right;">1132</p> <p>1 administrative committee with SelectHealth. I am,</p> <p>2 currently, the chairman of the board of Saint Alphonsus</p> <p>3 Health Alliance. I am -- well, I don't know if it exists</p> <p>4 anymore, but there was something called the CLC, Clinical</p> <p>5 Leadership Council, through Select or St. Luke's, which I</p> <p>6 was a member, but I haven't been asked to be at a meeting</p> <p>7 for almost two years, so I'm not sure if it still exists.</p> <p>8 <b>Q.</b> Does Primary Health have -- why does Primary</p> <p>9 Health have its employees serve on these various boards and</p> <p>10 committees?</p> <p>11 <b>A.</b> Well, we think it's in the best interests of our</p> <p>12 patients that we be involved in having a direct input into</p> <p>13 these various insurance products and networks in which our</p> <p>14 patients are using so that, again, when it gets down to the</p> <p>15 level of issues that impact care, we want to have input.</p> <p>16 And so the broader our impact, the better. And what has</p> <p>17 been pleasing is there is interest from all these different</p> <p>18 networks for us to participate. We appreciate that.</p> <p>19 <b>Q.</b> And what do you see as -- what do you see as the</p> <p>20 opportunities for Primary Health's employees in terms of,</p> <p>21 you know, contributions in participating in these various</p> <p>22 committees and boards?</p> <p>23 <b>A.</b> Well, for example, with Blue Cross, just to give</p> <p>24 an example, at a number of different levels in which we meet</p> <p>25 with Blue Cross, we're doing everything from talking at a</p>

1133

1 very granular level about diabetic care and why a particular  
 2 doctor might use a higher-priced pharmacy product and a  
 3 lower-priced and how does that affect outcomes, to giving  
 4 our feedback to Blue Cross in terms of how their product is  
 5 designed, which may impact care in terms of deductibles.  
 6 Because of our -- so much of our business has to  
 7 do with urgent care, all of these networks have concerns  
 8 about patients going to the emergency room when, in fact,  
 9 maybe it would be better that they are seen in urgent care.  
 10 So, again, we have discussed strategies that would be  
 11 helpful to patients to direct them to get, in a sense, to  
 12 the right place at the right time.  
 13 **Q.** When I asked you about your responsibilities as  
 14 administrator, one of the things you stressed was, you know,  
 15 making decisions that, you know, advance the interests of  
 16 providing quality care. So I would like to turn to more  
 17 detail about Primary Health's efforts in terms of quality of  
 18 care.  
 19 First of all, you mentioned that there are like 18  
 20 quality measures that you're looking at to compare Primary  
 21 Health, as a group, with other groups around the country, as  
 22 well as looking at how you can improve in terms of, you  
 23 know, serving your own patients. Can you tell me -- can you  
 24 tell the court -- you know, give the court some examples of  
 25 those measures.

1135

1 groups in the country that wouldn't be proud of that data.  
 2 And we continue to improve.  
 3 We also look at a number of outpatient parameters  
 4 that are being measured nationally. These are what are  
 5 called HEDIS measurements. So for example -- let me give  
 6 you an example. If you have a cold -- I think now everyone  
 7 is familiar that that's caused by a virus, and you shouldn't  
 8 have an antibiotic. And having an antibiotic is not a good  
 9 thing because, number one, it's not going to fix your cold,  
 10 and it's what causes resistant bacteria and problems. It's  
 11 also expensive to keep using more and more antibiotics. So  
 12 the measurement is if you have a cold, did you get an  
 13 antibiotic, and the answer should be no.  
 14 Well, at Primary Health, we measured this over two  
 15 years on 7,000 patients, and 98 percent of our patients did  
 16 not get an antibiotic. The HEDIS national standard is 75  
 17 percent.  
 18 Another quality indicator has to do with sore  
 19 throats. So again, if you have a sore throat, the question  
 20 is did you get an antibiotic. Well, you should only get an  
 21 antibiotic if you've had a culture done which shows that you  
 22 do, in fact, have strep throat. Again, at Primary Health,  
 23 if you got an antibiotic with a sore throat -- I may not  
 24 have the exact number, but it's somewhere between 94 and 95  
 25 percent of the patients -- again, it's over 3- or 4,000

1134

1 **A.** Yeah. So, first of all, there are, at various  
 2 levels, on a national level, particularly with Medicare  
 3 patients, there are opportunities to submit data and, in a  
 4 sense, measure yourself, and also it has an impact on  
 5 reimbursement. And we participate in what's called PQRS.  
 6 We participate in the Medicare Advantage 5-star programs.  
 7 And in these different programs we have gotten feedback that  
 8 we're one of the best. They may be looking at screening for  
 9 mammograms. They may be looking at screening for colon  
 10 cancer. Those are examples of sort of the preventive kind  
 11 of things we measure.  
 12 We are very active in an area in terms of diabetic  
 13 care. We've been following and managing a group of 2,000  
 14 adult diabetics for over three years and collecting data on  
 15 them. And we've shared this information with the health  
 16 department -- or with Health and Welfare, with Blue Cross,  
 17 and we're quite proud of our results.  
 18 So for example, a way to measure whether a patient  
 19 is doing well with their diabetes care, there is a lab  
 20 measurement called a "hemoglobin A1C." The national  
 21 standard is to try and get that below 7, closer to 6.8. And  
 22 of our 2,000 diabetics, close to 70 percent of  
 23 them -- excuse me -- the median on our patients is less than  
 24 7.3. And greater than 55 percent of ours are at that 6.8  
 25 level. And I would argue that there are very few medical

1136

1 patients -- in fact, only got an antibiotic when they had a  
 2 positive throat culture. And if you look at that HEDIS  
 3 measure, it's somewhere 75, 85 percent.  
 4 **Q.** So, Dr. Peterman, you've mentioned in your  
 5 response a couple times, at least a couple times, HEDIS. Is  
 6 that an acronym?  
 7 **A.** Yeah, it's an acronym. And I'm not going to have  
 8 the exact -- what it represents. It's a nationally  
 9 recognized group that measures quality and sets standards.  
 10 And I'm not going to -- I don't remember the exact --  
 11 **Q.** Can you spell out the acronym so that we have  
 12 that?  
 13 **A.** Yeah, H-E-I-D-I-S [sic].  
 14 **Q.** H-E-D-I-S?  
 15 **A.** H-E-I-D-I-S. I'm not done on the quality. You're  
 16 done with it?  
 17 **Q.** Let me ask you some other -- what about in terms  
 18 of what Primary Health has done in the area of quality?  
 19 Have you done anything in the area of immunizations?  
 20 **A.** Yeah. Probably most in this room that are from  
 21 Idaho, and maybe most in this room are from Idaho, is that  
 22 we've not done well with immunization of children.  
 23 **Q.** Why is that?  
 24 **A.** Well, separate -- I'll answer that question in a  
 25 second. I think it's notable that we are 49th in the

<p style="text-align: right;">1137</p> <p>1 country in terms of our rate of immunization of 2-year-olds.</p> <p>2 The national standard is to be 90 percent or greater. In</p> <p>3 our pediatric office it's 92 percent. In the state of</p> <p>4 Idaho, it's somewhere in the 70s. There's all kinds of</p> <p>5 reasons that are theorized why it's not higher in Idaho; it</p> <p>6 may have to do with access, availability, a whole bunch of</p> <p>7 other stuff.</p> <p>8 <b>Q.</b> And so this is about immunizations that, you know,</p> <p>9 it would be recommended that 2-year-olds --</p> <p>10 <b>A.</b> Yes, yes, yes. So the -- so there are some -- so</p> <p>11 again, the CDC, the Center for Disease Control, American</p> <p>12 Academy of Pediatrics, have stipulated that there is a</p> <p>13 standard of what immunizations 2-year-old children should</p> <p>14 have, and then you measure at that point. And so, again,</p> <p>15 the goal would be 100 percent, and we have data to show that</p> <p>16 we're above 90 percent.</p> <p>17 <b>Q.</b> And how do you -- so does this base your own -- on</p> <p>18 your patient data --</p> <p>19 <b>A.</b> Well, yeah, yeah. So this is based not only on</p> <p>20 our own patient data, but here in Idaho, we have a system</p> <p>21 called -- this is another acronym -- IRIS, which is a</p> <p>22 computer database that where all children in Idaho, if their</p> <p>23 parents allow it, their immunizations are recorded. So we</p> <p>24 come at the data both ways. We have our own data, and then</p> <p>25 we use the IRIS database so we can cross-match and see that</p>	<p style="text-align: right;">1138</p> <p>1 it's accurate.</p> <p>2 <b>Q.</b> What -- as a medical group, does Primary Health</p> <p>3 serve any patients who are on, you know, government health</p> <p>4 insurance?</p> <p>5 <b>A.</b> Yes. So we pride ourselves -- let me start by</p> <p>6 saying that we are a for-profit medical group. But having</p> <p>7 said that, it's our philosophy we don't turn patients away.</p> <p>8 And I mean, if a patient is at our door and they need to be</p> <p>9 seen, we see them.</p> <p>10 Having said that, we actually have established</p> <p>11 standards, and we measure this on a monthly basis, that all</p> <p>12 our doctors need to see a minimum number of government</p> <p>13 patients. It's part of our value. And so whether it's</p> <p>14 Medicaid or Medicare, all of our doctors have to see a</p> <p>15 certain percentage of these patients.</p> <p>16 <b>Q.</b> So is that an internal policy within Primary</p> <p>17 Health?</p> <p>18 <b>A.</b> Yes, that's an internal policy. As long as I'm</p> <p>19 president, we're going to stick with that policy.</p> <p>20 <b>Q.</b> And have your doctors been following that?</p> <p>21 <b>A.</b> Well, yes, but part of management is making sure,</p> <p>22 you know, everyone complies. But, yes.</p> <p>23 <b>Q.</b> Now, with your serving Medicare or Medicaid</p> <p>24 patients, are you getting any kind of subsidy to do that?</p> <p>25 <b>A.</b> No, we're not -- no. I mean, we're being</p>
<p style="text-align: right;">1139</p> <p>1 reimbursed the normal way that Medicare and Medicaid is</p> <p>2 reimbursed, and, as I'm sure everyone in this room is aware,</p> <p>3 reimbursement through Medicare and Medicaid is at a lower</p> <p>4 rate.</p> <p>5 <b>Q.</b> Have you gotten any feedback from other providers</p> <p>6 in the community about how Primary Health is doing in the</p> <p>7 area of quality of care?</p> <p>8 <b>A.</b> Well, so, yeah, we've gotten a lot of feedback.</p> <p>9 So from the extent of the payors, whether it's -- well, I</p> <p>10 don't know that I want to name them, but --</p> <p>11 <b>Q.</b> You don't have to.</p> <p>12 <b>A.</b> But, yes, we have gotten a lot of feedback, and as</p> <p>13 a result of that, the payors have come to us and asked us to</p> <p>14 look at our data and asked us, in a sense, what</p> <p>15 we've -- what we're doing. We've gotten grants. We've</p> <p>16 gotten feedback from, frankly, administrators at both</p> <p>17 hospitals. In fact -- I think it's germane -- I received an</p> <p>18 email from David Pate, very complimentary, of that Primary</p> <p>19 Health is, you know, well on its way to fulfilling the</p> <p>20 Triple Aim.</p> <p>21 <b>Q.</b> Approximately when was that that you got that?</p> <p>22 <b>A.</b> 2009 I believe I received that.</p> <p>23 <b>Q.</b> Now, you mentioned that, you know, a lot of what</p> <p>24 Primary Health does in terms of quality of care is</p> <p>25 data-driven.</p>	<p style="text-align: right;">1140</p> <p>1 <b>A.</b> Yes.</p> <p>2 <b>Q.</b> And so does Primary Health have an electronic</p> <p>3 medical records system or electronic health records system?</p> <p>4 <b>A.</b> Yes, we do.</p> <p>5 <b>Q.</b> Do you call that an EMR or EHR?</p> <p>6 <b>A.</b> Yes.</p> <p>7 <b>Q.</b> What kind of system does Primary Health,</p> <p>8 currently, use?</p> <p>9 <b>A.</b> We use eClinicalWorks.</p> <p>10 <b>Q.</b> When did -- well, when did Primary Health adopt</p> <p>11 eClinicalWorks?</p> <p>12 <b>A.</b> We purchased it in 2009. Sorry. 2007.</p> <p>13 <b>Q.</b> Prior to 2007 was Primary Health on another EMR</p> <p>14 system?</p> <p>15 <b>A.</b> No, no, no. Paper.</p> <p>16 <b>Q.</b> So eClinicalWorks would be the only system that</p> <p>17 Primary Health has had?</p> <p>18 <b>A.</b> Yes.</p> <p>19 <b>Q.</b> And were you -- were you involved in Primary</p> <p>20 Health's decision to adopt an EMR system?</p> <p>21 <b>A.</b> Yes, I was.</p> <p>22 <b>Q.</b> What was -- can you please describe your</p> <p>23 involvement.</p> <p>24 <b>A.</b> Well, again, so -- this is part of the philosophy</p> <p>25 of Primary Health, and I feel very strongly that you need to</p>

<p style="text-align: right;">1141</p> <p>1 empower the people closest to a problem to solve it. I'll</p> <p>2 get to your answer in a second here, Henry.</p> <p>3 So if you come into our office, and you have a</p> <p>4 question or a problem, and you're talking to the</p> <p>5 receptionist up front, we want to empower our receptionist</p> <p>6 to be able to answer your question.</p> <p>7 So as relates to electronic health records, I am</p> <p>8 not an IT guru. I am not the one who knows all the nuances</p> <p>9 of servers and all the other things. So in this sense, I</p> <p>10 had a team that looked at the details and got to the lowest</p> <p>11 level. But as they presented it to me, and as I looked at</p> <p>12 all the different options that we had, then ultimately it</p> <p>13 was my decision. But I relied on a team that, frankly, had</p> <p>14 better expertise as relates to some of the technicalities of</p> <p>15 an electronic health records system.</p> <p>16 <b>Q.</b> Since your adoption of eClinicalWorks, would you</p> <p>17 consider yourself an experienced user?</p> <p>18 <b>A.</b> Yes.</p> <p>19 <b>Q.</b> And since the Primary Health's adoption of</p> <p>20 eClinicalWorks, have you participated in any forums with</p> <p>21 other eClinicalWorks users?</p> <p>22 <b>A.</b> Yes. So I am part of a group of -- there are five</p> <p>23 other physician leaders from around the country, and we have</p> <p>24 a phone conference; it's actually every other Tuesday.</p> <p>25 Among the five of us, we represent, oh, maybe 8- to 10,000</p>	<p style="text-align: right;">1142</p> <p>1 physicians. So ours is one of the smaller, obviously, and</p> <p>2 then others are one of the largest. The largest would be a</p> <p>3 physician that represents Advocate physicians in Illinois,</p> <p>4 which has over 5,000 physician users.</p> <p>5 <b>Q.</b> And so all of the physician leaders on this phone</p> <p>6 conference are eClinicalWorks users?</p> <p>7 <b>A.</b> Yes. They are eClinicalWorks users, but what's</p> <p>8 interesting, in many of the instances, whether it's their</p> <p>9 hospital or their relationships with other groups, they are</p> <p>10 using other products. So that's the -- what's been so</p> <p>11 helpful about this group is most of our discussion is on</p> <p>12 eClinicalWorks, but all of us, and particularly some of the</p> <p>13 others, particularly Advocate, has experience with other --</p> <p>14 working with hospitals. For example, Epic, which is</p> <p>15 predominantly used by the larger hospitals --</p> <p>16 MR. SCHAFER: Your Honor, I'm going to object as</p> <p>17 hearsay to him relating conversations he's had with these</p> <p>18 other hospital systems about their use of other systems.</p> <p>19 THE COURT: Well, I'm not sure -- what is it being</p> <p>20 offered for, Mr. Su?</p> <p>21 MR. SU: It's being offered -- it's not -- I would</p> <p>22 say that it's not just -- it's not the truth of the matter</p> <p>23 as to what, you know, a particular fellow leader may have</p> <p>24 said, but it's really the exchange that's occurring on a</p> <p>25 week -- on a week -- biweekly basis that's informing</p>
<p style="text-align: right;">1143</p> <p>1 Dr. Peterman's own views about eClinicalWorks --</p> <p>2 THE COURT: He can testify there was an exchange</p> <p>3 without telling us precisely what the exchange involves.</p> <p>4 MR. SU: I will get to that, Your Honor.</p> <p>5 THE COURT: All right.</p> <p>6 BY MR. SU:</p> <p>7 <b>Q.</b> Let me get to that, Dr. Peterman. So during this</p> <p>8 call, what do you talk about with the other leaders?</p> <p>9 <b>A.</b> Well, now I'm not sure what I'm supposed to say.</p> <p>10 THE COURT: Well, just answer the question.</p> <p>11 THE WITNESS: Okay. All right.</p> <p>12 THE COURT: That's a good rule.</p> <p>13 THE WITNESS: Okay. All right. So what we talk</p> <p>14 about primarily -- thank you, Judge.</p> <p>15 What we talk about primarily is the use of</p> <p>16 eClinicalWorks and problems we're having or areas of</p> <p>17 success. We may -- so, for example, again, we are very</p> <p>18 proud that we have created certain templates for disease</p> <p>19 management, coordination of care that we're sharing with</p> <p>20 others that are now being used around the country, and they</p> <p>21 have shared things with us.</p> <p>22 This has also led to discussions about interfaces,</p> <p>23 interconnectivity, sharing of information in which we have</p> <p>24 discussed that hospitals may be using different systems than</p> <p>25 we're using, which leads us to me then saying, "Well, what</p>	<p style="text-align: right;">1144</p> <p>1 system is your hospital using?"</p> <p>2 BY MR. SU:</p> <p>3 <b>Q.</b> So when you were -- you forgot to talk about the</p> <p>4 example of Advocate that -- where they also have to deal</p> <p>5 with other systems. Am I correct in understanding that</p> <p>6 that's important to know because -- because of the issues</p> <p>7 regarding how the different systems talk to one another?</p> <p>8 <b>A.</b> Yes, yes. So, for example, Saint Alphonsus uses</p> <p>9 one electronic health records system -- and we obviously,</p> <p>10 frankly we work with both hospitals very closely -- and</p> <p>11 St. Luke's uses another system. So I'm very interested how</p> <p>12 they've worked with eClinicalWorks. And also, we're also</p> <p>13 very interested in terms of health data exchanges and how</p> <p>14 that all works.</p> <p>15 <b>Q.</b> And so am I correct in understanding that one of</p> <p>16 the benefits of this call that you have with the other</p> <p>17 physician leaders is that you're getting -- they are sharing</p> <p>18 their experiences and insight with you about the</p> <p>19 eClinicalWorks and other systems?</p> <p>20 <b>A.</b> Yes.</p> <p>21 <b>Q.</b> When Primary Health was looking at an EMR system,</p> <p>22 did it evaluate other vendors besides eClinicalWorks?</p> <p>23 <b>A.</b> Yes, we did.</p> <p>24 <b>Q.</b> Do you remember which ones?</p> <p>25 <b>A.</b> Well, we started, again -- again, I had a team,</p>



1145

1 and the team started with, in a sense, a list of all the  
 2 ones that were available, and there, at that time, oh,  
 3 golly, somewhere between 10 and 15. Some of those quickly  
 4 fell out of favor because they just weren't appropriate for  
 5 our size or cost. For example -- now I'm a little gun-shy  
 6 here -- but, for example, Epic, which we wanted to look at,  
 7 we couldn't look at because it was only -- you had to be a  
 8 certain size in a hospital, and so we couldn't look at that.  
 9 Ultimately, eClinicalWorks, for a lot of different  
 10 reasons, fit what we needed, and we believe we made the  
 11 right decision.  
 12 **Q.** And you mentioned that Saint Alphonsus and  
 13 St. Luke's are on different EMR systems?  
 14 **A.** Yes.  
 15 **Q.** What is St. Luke's on?  
 16 **A.** Epic.  
 17 **Q.** And what about Saint Alphonsus?  
 18 **A.** So I can't recall if they're on NextGen or  
 19 Centricity. I just don't recall. At the moment, I don't  
 20 recall.  
 21 **Q.** Has Primary Health been able to get eClinicalWorks  
 22 to interoperate with Epic and with whatever Saint Alphonsus'  
 23 system is?  
 24 **A.** Yes, yes, yes. So at a number of levels we were  
 25 one of the first, if not the first, to create some

1147

1 interfaces with St. Luke's.  
 2 At Saint Al's, we have a digital interface for  
 3 imaging that is with the group that contracts with Saint  
 4 Al's. They're -- have a -- I guess, they have a contractual  
 5 relationship with Saint Al's. So our X-rays at all our  
 6 Primary Health -- particularly our combination clinics which  
 7 we talked about, those X-rays are taken; within 20 minutes  
 8 or less we have a reading because it's digital, and then it  
 9 comes right back at us.  
 10 We also have at all our clinics for patients who  
 11 get an EKG -- and I think you're all familiar with what that  
 12 is, which is a heart tracing -- it digitally goes to the  
 13 cardiologist at Saint Al's. They can read it and then  
 14 digitally send back not only the results, but then it  
 15 populates into our eClinicalWorks system.  
 16 The third thing I would say, which is to the  
 17 credit of both Saint Al's and St. Luke's, both institutions  
 18 are sharing their information or loading their -- uploading  
 19 their information with the Idaho Health Data Exchange, and  
 20 we, Primary Health, are members of the Idaho Health Data  
 21 Exchange. We've trained all our personnel, particularly the  
 22 nurses and the doctors, how to use it. And so if a patient  
 23 of mine is seen in the emergency room at St. Luke's or Saint  
 24 Al's, typically, within the next morning, or sometimes even  
 25 quicker, I can go on the Health Data Exchange and see what

1146

1 interfaces with St. Luke's, which we were very pleased that  
 2 their IT department would take the time to work with us.  
 3 So, for example, right now we have an interface with  
 4 St. Luke's as relates to labs. So if we order a lab at  
 5 St. Luke's, it can be done, in a sense, electronically,  
 6 through the system. But the beauty is it populates our  
 7 system in the right lab fields. And so if I order a sodium  
 8 at St. Luke's, it will -- when it's finished it will come  
 9 back right in eClinicalWorks, and, importantly, it's in a  
 10 retrievable space, so it locates in the right place and it  
 11 can be retrieved.  
 12 Second, with St. Luke's, is our pediatricians, of  
 13 course, are on eClinicalWorks. We have worked with the  
 14 pediatric hospitalists at St. Luke's to give them, quote,  
 15 rights so that they can, in a sense, view our  
 16 eClinicalWorks, and then, in a sense, we set up on their  
 17 computers up on the floor and given them passwords.  
 18 So, for example, if my patient, pediatric patient,  
 19 is admitted at St. Luke's, the pediatric hospitalists can  
 20 look at the record and see what medicines the patient is on.  
 21 And most importantly, when the patient is discharged, the  
 22 pediatric hospitalists from St. Luke's can then communicate  
 23 with me directly through the electronic health record. I  
 24 get something called a telephone encounter, and it becomes  
 25 part of the patient's record. So those are two examples of

1148

1 happened, see the labs and all the rest.  
 2 MR. SU: Let's just call up really quickly Exhibit  
 3 2178, please.  
 4 THE WITNESS: So do I --  
 5 THE COURT: It will show up on the screen.  
 6 BY MR. SU:  
 7 **Q.** It will show up on your monitor, Dr. Peterman.  
 8 **A.** Like electronic health records.  
 9 THE COURT: That thought crossed my mind as you  
 10 were saying that.  
 11 THE WITNESS: Unfortunately, Judge, it's a PDF.  
 12 It's not the real thing.  
 13 MR. SU: If I could ask Mr. Oxford, let's go to  
 14 the 24th page of this file, if we could.  
 15 BY MR. SU:  
 16 **Q.** So, Dr. Peterman, I'm showing you what has been  
 17 premarked as Trial Exhibit 2178. Do you recognize this  
 18 page?  
 19 **A.** Well, I do. You know, my copy here is kind of  
 20 faded, but I --  
 21 THE COURT: Did we provide the witness, I think,  
 22 with a hard copy so he can look at that as well? I think  
 23 that's in the binder.  
 24 THE WITNESS: Oh, this is better. No, this is  
 25 better.

<p style="text-align: right;">1149</p> <p>1 THE COURT: All right.</p> <p>2 THE WITNESS: Someone is aware of my age or</p> <p>3 something here. Okay. Yep.</p> <p>4 BY MR. SU:</p> <p>5 Q. What is this from? What is this page from?</p> <p>6 A. Well, I believe I've written this, and I think</p> <p>7 this is -- so I provide a monthly board report to the</p> <p>8 stockholders and to the board, and I believe this is an</p> <p>9 extract from one of those monthly reports.</p> <p>10 Q. Does Primary Health have a blog?</p> <p>11 A. A blog?</p> <p>12 Q. Yes, sir.</p> <p>13 A. It has on and off, and this could have -- this</p> <p>14 could have been taken from there. Yes. But I actually</p> <p>15 think that was originally in my board report. But, yes, it</p> <p>16 could have been from the blog.</p> <p>17 Q. All right. But you do recognize this text as</p> <p>18 something you wrote. Is that what you're telling the court?</p> <p>19 A. I'm pretty sure I wrote this, yes.</p> <p>20 Q. So could you tell the court what you were</p> <p>21 reporting?</p> <p>22 A. Well, again, and I think most of the individuals</p> <p>23 in this room are familiar with this, but as part of the</p> <p>24 Affordable Care Act, to encourage providers across the</p> <p>25 country to use electronic health records, the government</p>	<p style="text-align: right;">1150</p> <p>1 said we will pay you, in a sense, money based on seeing</p> <p>2 patients using electronic health records, but there had to</p> <p>3 be some way to, quote, attest and prove that you truly were</p> <p>4 using electronic health records.</p> <p>5 So the government came up with a number of quality</p> <p>6 parameters, quite a few of them, and it was quite a chore</p> <p>7 to, quote, attest. And what this references was that one of</p> <p>8 our physicians was the first in the state of Idaho to attest</p> <p>9 for meaningful use.</p> <p>10 Q. And in this text, I believe it also says that</p> <p>11 there were other physicians, as well, that --</p> <p>12 A. Yes. All Primary Health Medical Group doctors,</p> <p>13 based on their hiring date and the rules of attesting, 100</p> <p>14 percent attested for meaningful use.</p> <p>15 Q. You're saying as of today?</p> <p>16 A. As of today, yes.</p> <p>17 Q. And so -- and if we could have Mr. Oxford turn to</p> <p>18 the next page of this file. And if you could highlight the</p> <p>19 second to last paragraph, please.</p> <p>20 Do you see that Dr. Peterman?</p> <p>21 A. Yeah.</p> <p>22 Q. Is that something that you also wrote, as well?</p> <p>23 A. Yes.</p> <p>24 Q. And do you agree with everything that's said</p> <p>25 there?</p>
<p style="text-align: right;">1151</p> <p>1 A. Yes.</p> <p>2 Q. So let me -- let me just ask you just a couple of</p> <p>3 examples. You say that there is less room for errors with</p> <p>4 tools such as E-Prescriptions. What is E-Prescriptions?</p> <p>5 A. Well, I think dating back to second grade, there</p> <p>6 was questions about my fine motor control and my penmanship.</p> <p>7 Maybe that's why I'm not a neurosurgeon. Having said that,</p> <p>8 there are errors made based on trying to interpret the</p> <p>9 written prescriptions. With an electronic health record,</p> <p>10 that just can't occur.</p> <p>11 The other thing is in electronic health records,</p> <p>12 you can build into the system, in a sense, safeties so that</p> <p>13 there is less chance of prescribing the wrong dose, the</p> <p>14 wrong quantity. Alerts come up so you -- you're aware of</p> <p>15 allergies.</p> <p>16 Q. So this problem that you have with your motor</p> <p>17 skills, is that something that's sort of prevalent among</p> <p>18 people in your profession?</p> <p>19 A. Yes.</p> <p>20 Q. In general, have you -- has -- have you been</p> <p>21 satisfied with eClinicalWorks?</p> <p>22 A. Oh, yes. Very satisfied.</p> <p>23 Q. And what about your fellow physicians?</p> <p>24 A. Well, yes, but I would preface it by saying that</p> <p>25 presumably the reason I have been successful in my job is I</p>	<p style="text-align: right;">1152</p> <p>1 know how to manage professionals, and managing physicians is</p> <p>2 probably as challenging as managing lawyers, and so they're</p> <p>3 not always happy. But, yes, they are productive and doing</p> <p>4 well on eClinicalWorks.</p> <p>5 Q. And when you say that "they're not always happy,"</p> <p>6 you're referring to when they were first being told to</p> <p>7 use --</p> <p>8 A. Yes, yes.</p> <p>9 Q. -- eClinicalWorks?</p> <p>10 A. Yes. Yes. So the -- I use the analogy that when</p> <p>11 physicians first go on electronic health records, it's like</p> <p>12 asking a doctor to see a patient speaking Latin. It is</p> <p>13 really that challenging. And so in that regard, when you</p> <p>14 first begin, particularly those physicians that are older,</p> <p>15 they don't want to make that change. And so in that regard,</p> <p>16 yes, there was some resistance. But within six months, 100</p> <p>17 percent of our doctors were on electronic health records.</p> <p>18 All were productive. All were doing well.</p> <p>19 Q. You mentioned that Primary Health is a member of</p> <p>20 the Idaho Health Data Exchange. Could you tell the court</p> <p>21 what is the Idaho Health Data Exchange?</p> <p>22 A. Yeah. The Health Data Exchange is best to be</p> <p>23 described as really a hub. I think in my deposition I may</p> <p>24 have misspoken. I think I said it was a repository, and</p> <p>25 really it's better described as a hub. And what I mean by</p>

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1 that, it's a connection in which we -- we, the providers, or  
2 those that are taking care of patients, can access  
3 information that is directly related to the patient.  
4 And to the credit of the governor and the director  
5 of Health and Welfare and the state legislature, there is an  
6 encouragement to get all hospitals and all providers who are  
7 on electronic health records to, in a sense, feed their  
8 information on patients through this hub, so if my patient  
9 is seen in Twin Falls or Shoshone, that doctor up there can  
10 get on the electronic health records and see about the  
11 patient.

12 I think we've all encountered, whether it's our  
13 parents or we've heard about someone shows up in the  
14 emergency room, and they say, "Well, I take one green pill  
15 and three blue pills and maybe a half yellow pill," and no  
16 one knows what they mean; or in my case, I can't remember  
17 the name of which one I'm on. And so with electronic health  
18 records, particularly the ability to access through the  
19 Health Data Exchange, that information should all be  
20 available.

21 Q. Are you familiar with registries for patients with  
22 special situations?

23 A. Yes, I am.

24 Q. Is there a -- does EMR have a role in terms of,  
25 you know, working --

1 A. Yes. Yes.

2 Q. -- in conjunction with these registries?

3 A. Yes. And I would say that -- I wouldn't say it's  
4 impossible, but it would be challenging to create a registry  
5 that is disease-specific if you didn't have a way to query  
6 or search. I'm not quite sure how you would do that in  
7 paper records. You would have to go through claims data.  
8 You would have to go back through diagnostic code. But with  
9 electronic health records, again, it's searchable, so you  
10 can just immediately get a registry: All patients under the  
11 age of 12 with asthma.

12 Q. And with that, then, you can do -- once you  
13 create, searched and picked out the patients with the  
14 particular characteristics that you're interested in, what  
15 can you do with that information?

16 A. Well, just to give you an example -- I'll give you  
17 two examples. One is I mentioned to you that we're managing  
18 2,000 adult diabetics, adult-onset diabetics, and we've been  
19 managing them for three years. We created a registry of  
20 those patients. We're looking at measuring five different  
21 quality indicators over time, and we can break that down in  
22 terms of physician-specific, the whole group. We can track,  
23 and it's very powerful. So it enables you to -- if, for  
24 example, a particular physician his cohort of diabetics is  
25 not performing well, it is my belief it's not that, quote,

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1 it's a bad doctor; there is something not working with the  
2 system. So we're able to look at that data and, for  
3 example, say, well, gee, the receptionists are not calling  
4 the patients in or something to that effect.

5 We also have created -- in our pediatric office  
6 we're going towards what's called a Patient-Centered Medical  
7 Home. We have a registry of high-risk children and,  
8 specifically, a registry that speaks to children with  
9 asthma. And I can tell you with a -- there are -- there are  
10 400 children that are in our registry with asthma, but, for  
11 example, one of the payors identified 33 of those patients  
12 that have been in our registry, and in 2012, zero of those  
13 33 patients were in the emergency room with asthma, which is  
14 quite remarkable.

15 And the point being is you've identified them,  
16 you're presumably now improving care, preventive kind of  
17 things. And in our case, we've had good results. And  
18 all -- you know, let's be clear here. I have results to  
19 show you areas where we are not doing so well. We have room  
20 for improvement in other things.

21 Q. So with the example of the children with asthma --  
22 because I have two kids with asthma -- what you're looking  
23 for then is preventive care --

24 A. Yes.

25 Q. -- you know, so to prevent situations where they

1 have to go to the hospital?

2 A. Yes, yes. I mean, just to give you an example,  
3 again, we could never have measured this in advance before  
4 without electronic health records, but it only makes sense.  
5 I mean, here I've been practicing pediatrics for over 30  
6 years. Don't you think the mothers and fathers would want a  
7 piece of paper and a plan, an asthma action plan that tells  
8 what they are supposed to do when their child wheezes?  
9 Well, you know, we never used to hand -- me mostly -- never  
10 handed it out. But when we started measuring it and I saw  
11 where I didn't do so well on the curve, my behavior changed  
12 very quickly.

13 Q. Is there a term for that, you know, changing  
14 behavior when you see that?

15 A. Improvement? So --

16 THE COURT: Actually, it's a feedback loop may be  
17 the word you're looking for, but -- if you think managing  
18 doctors and lawyers are tough, try managing judges. And  
19 that's one of the things that I actually have an interest  
20 in, is how you use feedback loops to change behavior without  
21 being coercive. And I think that's probably a similar --

22 THE WITNESS: Yeah, yeah, the judge brings up a  
23 very good point. Our doctors, including me, are not paid  
24 more for doing the right thing. They want to do the right  
25 thing. And I believe what the judge is speaking to, and he

<p style="text-align: right;">1157</p> <p>1 knows the terms better than I do, is we share the data with</p> <p>2 everyone. Everyone gets to see how they're doing. No one</p> <p>3 likes to be the D physician with the lower graph. And so</p> <p>4 these are all ways in which we're managing our population of</p> <p>5 patients throughout Primary Health.</p> <p>6 BY MR. SU:</p> <p>7 <b>Q.</b> I guess, I think the judge's term "feedback loop"</p> <p>8 is right, as well. I was referring to evidence-based</p> <p>9 medicine. Is that what you call that?</p> <p>10 <b>A.</b> Oh, yes.</p> <p>11 <b>Q.</b> Is that what you would call this?</p> <p>12 <b>A.</b> Yes. Yes. Oh, I'm sorry. Yes. So, again, all</p> <p>13 of -- whether it's diabetic care, asthma care as relates to</p> <p>14 high cholesterol, everything at Primary -- not everything.</p> <p>15 We try to base everything on evidence-based medicine. So</p> <p>16 there are national standards on how things should be done.</p> <p>17 With an electronic health records system, you can build that</p> <p>18 into the system. So the decisions you make, the choices you</p> <p>19 make that appear to you on the electronic health record are</p> <p>20 evidence-based.</p> <p>21 <b>Q.</b> And have you been able to do all these quality</p> <p>22 initiatives that you've described to the court on your own,</p> <p>23 that is, with Primary Health as a independent group?</p> <p>24 <b>A.</b> Yes.</p> <p>25 <b>Q.</b> And have you been able to do that with -- just</p>	<p style="text-align: right;">1158</p> <p>1 with the eClinicalWorks, the EMR system?</p> <p>2 <b>A.</b> Yes.</p> <p>3 <b>Q.</b> Earlier I asked you about, you know, your</p> <p>4 employees serving on various committees and boards. Are any</p> <p>5 of them compensated for their time on those?</p> <p>6 <b>A.</b> Yes. They get various stipends for serving</p> <p>7 on -- some do, some don't.</p> <p>8 <b>Q.</b> And those stipends, if they're offered, are they</p> <p>9 offered to all of the people who serve on that particular</p> <p>10 committee?</p> <p>11 <b>A.</b> Yeah. They're not just offered to Primary Health</p> <p>12 providers. If there is a stipend, it's given to -- yeah,</p> <p>13 it's given to all the physicians that are involved, I think.</p> <p>14 MR. SU: Your Honor, at this point, I'm going to</p> <p>15 move to the closed session of my examination.</p> <p>16 THE COURT: I'll have to ask anyone not -- I'm not</p> <p>17 sure who needs to be excluded. I am assuming counsel has</p> <p>18 worked that out. Perhaps, anyone not an attorney in the</p> <p>19 case will need to step out of the courtroom.</p> <p>20 ***** COURTROOM CLOSED TO THE PUBLIC *****</p> <p>21 THE COURT: Counsel, just for your planning</p> <p>22 purposes, we're going to take a break about 20 after, so you</p> <p>23 can -- around that time if you would pick a good breaking</p> <p>24 point when you're in between lines of inquiry, we'll take</p> <p>25 that break.</p>
<p style="text-align: right;">1159</p> <p>1 MR. SU: Yes, Your Honor. Thank you.</p> <p>2 THE COURT: I think we're where we can go ahead</p> <p>3 and proceed. Mr. Su.</p> <p>4 MR. SU: Okay. Thank you, Your Honor.</p> <p>5 BY MR. SU:</p> <p>6 <b>Q.</b> I wanted to ask you about the amount of investment</p> <p>7 that Primary Health makes in order to acquire</p> <p>8 eClinicalWorks, how much -- approximately, how much was</p> <p>9 that?</p> <p>10</p> <p>11 <b>REDACTED</b></p> <p>12</p> <p>13</p> <p>14 <b>Q.</b> That's just for eClinicalWorks alone?</p> <p>15 <b>A.</b> Yes. That's a service fee that we pay them. I</p> <p>16 mean, there are obviously other -- large costs for the</p> <p>17 servers and laptops and all the rest.</p> <p>18 <b>Q.</b> Around the time that -- I guess, you said it was</p> <p>19 2007 when Primary Health was evaluating EMR systems, were</p> <p>20 there other, you know, healthcare providers in the community</p> <p>21 that were doing the same thing?</p> <p>22 <b>A.</b> Yes.</p> <p>23 <b>Q.</b> Which ones?</p> <p>24 <b>A.</b> Well, I can -- there was, at the time, St. Luke's</p> <p>25 was, with their family doctors; Saltzer Medical Group; Idaho</p>	<p style="text-align: right;">1160</p> <p>1 Pulmonary; and some other groups.</p> <p>2 <b>Q.</b> And was there any kind of coordination among the</p> <p>3 different providers as to what EMR system?</p> <p>4 <b>A.</b> Well, we made an independent decision, as I said</p> <p>5 to you earlier. However, that St. Luke's was going to use</p> <p>6 the system certainly had an influence, in the sense that we</p> <p>7 felt that, in terms of resources, if St. Luke's was using</p> <p>8 eClinicalWorks, then we would have an opportunity to speak</p> <p>9 with their IT department and share information, that kind of</p> <p>10 thing.</p> <p>11 <b>Q.</b> And so did -- did St. Luke's use -- adopt</p> <p>12 eClinicalWorks, as well?</p> <p>13 <b>A.</b> Well, they did, yes.</p> <p>14 <b>Q.</b> And was there the sharing of information that you</p> <p>15 just described between the IT departments?</p> <p>16 <b>A.</b> There was.</p> <p>17 <b>Q.</b> And did -- what happened with that?</p> <p>18 <b>A.</b> Well, they -- so I'm just going to relate what</p> <p>19 they said to us, which is they were having problems. So</p> <p>20 their IT department at the level of the technical side had a</p> <p>21 lot of questions of our IT department. On the</p> <p>22 implementation side, on the physician side, they had</p> <p>23 resistance and difficulty -- again, these are their words,</p> <p>24 not mine -- that they couldn't -- that they had trouble</p> <p>25 proceeding. And so they were asking for the help of my team</p>



<p style="text-align: right;">1161</p> <p>1 continually.</p> <p>2 And at some point I had to say to the chief</p> <p>3 financial officer of St. Luke's, we're glad to help, but we</p> <p>4 can't -- our employees work for us, and they need to support</p> <p>5 our system. So we -- at one point their doctors came over</p> <p>6 to our clinics to try and understand better how to use</p> <p>7 eClinicalWorks, and it was evident to us that they</p> <p>8 had -- were very frustrated and had trouble using it. They</p> <p>9 asked if some of our trainers would come over to their --</p> <p>10 MR. SCHAFER: Objection, Your Honor, to foundation</p> <p>11 and hearsay. I don't think it's been clear that Dr.</p> <p>12 Peterman was part of these conversations or who said what.</p> <p>13 BY MR. SU:</p> <p>14 Q. Were you present at this meeting with -- when the</p> <p>15 doctors came over?</p> <p>16 THE COURT: Just a moment. I'll sustain the</p> <p>17 objection.</p> <p>18 At this point, let's go ahead, Mr. Su, and back up a</p> <p>19 bit and respond to the objection of counsel.</p> <p>20 MR. SU: Certainly.</p> <p>21 BY MR. SU:</p> <p>22 Q. In connection with the, you know, the discussions</p> <p>23 that were apparently happening between the IT department at</p> <p>24 Primary Health and at St. Luke's, were you involved in any</p> <p>25 of those --</p>	<p style="text-align: right;">1162</p> <p>1 A. Some.</p> <p>2 Q. -- exchanges?</p> <p>3 A. Yes. Some. I spoke with Mr. Pomeroy.</p> <p>4 Q. Mr. Pomeroy is someone at St. Luke's?</p> <p>5 A. Yeah, he is the chief financial officer. And at</p> <p>6 that time, IT was under his supervision.</p> <p>7 Q. Does -- is IT under your supervision at Primary</p> <p>8 Health?</p> <p>9 A. No. We have a director of IT. He reports up to</p> <p>10 our executive director and ultimately to me. As I said,</p> <p>11 we're horizontal. I don't involve with the direct</p> <p>12 day-to-day.</p> <p>13 Q. What's the basis of your knowledge that your IT</p> <p>14 people were having to spend time helping St. Luke's?</p> <p>15 A. Well, my director of IT came to me and said --</p> <p>16 MR. SCHAFER: Your Honor, this is clearly hearsay,</p> <p>17 I think. He is relating a conversation he had with his IT</p> <p>18 director that that individual had with somebody at St.</p> <p>19 Luke's.</p> <p>20 THE WITNESS: Judge, can I say something?</p> <p>21 THE COURT: Well, I'm going to give Mr. Su a</p> <p>22 chance to redirect you and make sure that we're not just</p> <p>23 involved with hearsay. You can testify as to any</p> <p>24 communication you had with someone from St. Luke's, but the</p> <p>25 extent to which you may have received that information</p>
<p style="text-align: right;">1163</p> <p>1 secondhand, through your IT director or otherwise, that</p> <p>2 would be hearsay and what's being objected to.</p> <p>3 THE WITNESS: Right. But that's not what I said.</p> <p>4 He --</p> <p>5 THE COURT: That's why I'm giving Mr. Su a chance</p> <p>6 to take care of it. It's better to let him ask the question</p> <p>7 rather than have you volunteer it.</p> <p>8 THE WITNESS: Yeah, but it bothers me that</p> <p>9 Mr. Schafer said something I didn't say.</p> <p>10 THE COURT: Well, I think he may have anticipated</p> <p>11 you were going to say something.</p> <p>12 THE WITNESS: Oh, Okay.</p> <p>13 THE COURT: That often happens, which is why,</p> <p>14 again, I'm asking Mr. Su to back up and make sure that we</p> <p>15 approach this from an angle that will not involve that</p> <p>16 problem.</p> <p>17 Mr. Su.</p> <p>18 BY MR. SU:</p> <p>19 Q. Well, let me ask you this, Dr. Peterman: If your</p> <p>20 IT people are having to spend time helping St. Luke's, how</p> <p>21 does that impact -- does that -- why would that kind of</p> <p>22 issue come up to your level?</p> <p>23 A. Well, the reason the issue came to me is</p> <p>24 Mr. Pomeroy called me and asked if our IT people and our</p> <p>25 director of IT would help them. It was not hearsay. I'm</p>	<p style="text-align: right;">1164</p> <p>1 not a lawyer, but for goodness sakes.</p> <p>2 THE COURT: Let's -- let's get back on track here,</p> <p>3 Counsel. Go ahead, Mr. Su.</p> <p>4 BY MR. SU:</p> <p>5 Q. Dr. Peterman, what ultimately happened with this</p> <p>6 effort to assist St. Luke's with the --</p> <p>7 A. Well, my -- we helped them to a certain degree,</p> <p>8 but a new person sort of came in charge of clinics at St.</p> <p>9 Luke's, John Kee. And he expressed to me very strongly his</p> <p>10 frustration with eClinicalWorks. He informed me and my</p> <p>11 executive director they had trouble getting their bills out.</p> <p>12 He used some language which I'm not going to repeat. And so</p> <p>13 he said, "We're not going to continue using eClinicalWorks."</p> <p>14 Q. All right. Let me turn to a different topic,</p> <p>15 which is, you know, your Primary Health's business model.</p> <p>16 To do that, let me ask Mr. Oxford to pull up Trial</p> <p>17 Exhibit 1336. Again, Mr. Oxford, if you could highlight the</p> <p>18 first page where it -- right at the bold heading there, and</p> <p>19 then the text immediately below that, please. All right.</p> <p>20 Bring that down. Thank you.</p> <p>21 So, Dr. Peterman, do you recognize Exhibit 1336?</p> <p>22 A. I do.</p> <p>23 Q. What is it?</p> <p>24 A. I believe it comes from our Internet site.</p> <p>25 Q. All right. You see there is text there</p>

<p>1165</p> <p>1 about -- that reads, "Primary Health Medical Group is a</p> <p>2 multispecialty group with 12 neighborhood clinics"?</p> <p>3 <b>A.</b> Yes.</p> <p>4 <b>Q.</b> What do you mean by "neighborhood clinics"?</p> <p>5 <b>A.</b> Well, so as relates to, specifically, the</p> <p>6 combination clinics, they -- they are purposely then placed</p> <p>7 and constructed to service the community in that</p> <p>8 neighborhood.</p> <p>9 <b>Q.</b> And so give me an example. Let's take the</p> <p>10 example -- do you have any of these combination clinics in</p> <p>11 Boise?</p> <p>12 <b>A.</b> Yes. So, for example, just to give you an</p> <p>13 example, we have a combination clinic in Boise that is on</p> <p>14 Broadway; and we have a combination clinic that is on</p> <p>15 Myrtle, downtown. They're about 2.2, 2.8 miles apart, but</p> <p>16 they are very diverse and serve, in a sense, different</p> <p>17 communities and different needs, similar to our clinics in</p> <p>18 Caldwell and Nampa serve very different needs than our</p> <p>19 clinics in Meridian or Eagle.</p> <p>20 <b>Q.</b> Would you, please, tell the court where your</p> <p>21 clinics are located in Nampa?</p> <p>22 <b>A.</b> So -- so quite frequently I get lost in Nampa. I</p> <p>23 don't know why that is -- so we have two clinics. One is on</p> <p>24 12th Avenue; it's what we call our South Nampa Clinic. And</p> <p>25 then our other clinic is on the main boulevard.</p>	<p>1166</p> <p>1 <b>Q.</b> Going back to the two clinics that you mentioned</p> <p>2 in Boise, the one on Myrtle Street and the one on Broadway,</p> <p>3 was one opened fairly recently?</p> <p>4 <b>A.</b> Yes. We opened our downtown clinic on Myrtle</p> <p>5 Street, oh, a little more than -- a little less -- about a</p> <p>6 year ago, maybe less than a year ago.</p> <p>7 <b>Q.</b> And you told the court it's about 2.2 miles away</p> <p>8 from Broadway?</p> <p>9 <b>A.</b> 2.8, I think.</p> <p>10 <b>Q.</b> 2.8 miles. Why did you -- what was the thinking</p> <p>11 behind opening this clinic on Myrtle Street?</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18 REDACTED</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>1167</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10 REDACTED</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1168</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10 REDACTED</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<div>1169</div> <div>1</div> <div>2</div> <div>3</div> <div>4</div> <div>5</div> <div>6</div> <div>7</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> <div>REDACTED</div>	<div>1170</div> <div>1</div> <div>2</div> <div>3</div> <div>4</div> <div>5</div> <div>6</div> <div>7</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> <div>REDACTED</div>
<div>1171</div> <div>1</div> <div>2</div> <div>3</div> <div>4</div> <div>5</div> <div>6</div> <div>7</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> <div>REDACTED</div> <div>In 2011, representatives from St. Luke's came to us again, and they presented, actually, a slide presentation about their intention to increase their market share in Nampa. And based on that -- and, again, a closer relationship with Saltzer. And based on that, again, we were very concerned what that would mean in terms of our business model, so we -- we waited.</div> <div>And now we come to 2012, and we made an internal decision that we couldn't wait any longer, and so we proceeded.</div> <div><b>Q.</b> Can you -- again, we're in a closed courtroom here. Can you tell the court specifically what gave you concern when St. Luke's visited you and told you about their plans for Nampa?</div> <div><b>A.</b> Well, what was concerning -- the presentation was</div>	<div>1172</div> <div>1</div> <div>2</div> <div>3</div> <div>4</div> <div>5</div> <div>6</div> <div>7</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> <div>made by Chris Roth and Gary Fletcher. And what was concerning was they spoke to the number of visits they get from Canyon County to their Meridian hospital -- and I can't recall if they said their downtown hospital -- and they wanted to maintain and increase their market share. That was their words.</div> <div>And Tracy Morris, the executive director, and myself both attended this meeting, and we were both struck by the emphasis of market share, which, you know, as a not-for-profit community hospital, it seemed -- you know, it obviously seemed like a business decision, and if they wanted to get market share, we were worried what does that mean to us. And at the same time, they were buying up medical groups, and they were telling us they were going to have a closer relationship with Saltzer. And so we were worried what that would mean to us in terms of competition.</div> <div>I will tell you we have an experience with competition with St. Luke's, and I think this is relevant, unless someone is going to object. Can I proceed or --</div> <div>THE COURT: Well, you can, but we are a little past where I would normally take the break.</div> <div>Mr. Su --</div> <div>BY MR. SU:</div> <div><b>Q.</b> Let me just ask a couple questions of Dr. Peterman, and then I will be ready to take a break.</div>

<p>1173</p> <p>1 THE COURT: Yes.</p> <p>2 BY MR. SU:</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12 REDACTED</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22 MR. SU: All right. Let's take -- I'm ready to</p> <p>23 take a break, Your Honor.</p> <p>24 THE COURT: Very good. We'll take a 15-minute</p> <p>25 recess. Counsel, please try to be in your seats in 15</p>	<p>1174</p> <p>1 minutes, and we'll try to reconvene promptly at that time.</p> <p>2 We'll be in recess.</p> <p>3 (Recess.)</p> <p>4 ***** COURTROOM REMAINS CLOSED TO THE PUBLIC *****</p> <p>5 THE COURT: For the record, I'll note Mr. Peterman</p> <p>6 is back on the stand.</p> <p>7 Dr. Peterman, I'll remind you you are still under oath.</p> <p>8 Mr. Su, you may resume your examination of</p> <p>9 Dr. Peterman.</p> <p>10 MR. SU: Thank you, Your Honor.</p> <p>11 BY MR. SU:</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17 REDACTED</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>1175</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10 REDACTED</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1176</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10 REDACTED</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>



<p style="text-align: right;">1177</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: center;">REDACTED</p> <p><b>Q.</b> Now, you mentioned the opening of the South Nampa clinic. Do you have a family practice doctor there --</p> <p><b>A.</b> Yes.</p> <p><b>Q.</b> -- who is taking appointments?</p> <p><b>A.</b> We do.</p> <p><b>Q.</b> What's his name or her name?</p> <p><b>A.</b> REDACTED</p> <p><b>Q.</b> All right. And how did you come to employ</p>	<p style="text-align: right;">1178</p> <p>1 REDACTED and yourself in that location?</p> <p>2 <b>A.</b> So REDACTED -- it's a two-step process here.</p> <p>3 REDACTED actually is a family doctor who practiced for</p> <p>4 many years in the emergency room at Caldwell, and the</p> <p>5 contract for emergency services changed from his group to</p> <p>6 another group. So, in a sense, REDACTED was looking for</p> <p>7 a job.</p> <p>8 And he came to work for us and so -- wanted to</p> <p>9 stay in Canyon County and actually lives in Nampa. So he</p> <p>10 became our appointment-based family doctor in Nampa, our</p> <p>11 older Nampa clinic.</p> <p>12 And so when we built the South Nampa clinic, we</p> <p>13 gave REDACTED the option to move to the new clinic, which</p> <p>14 actually is in his neighborhood. It's very close to his</p> <p>15 home. I think it's less than two miles from his home. So</p> <p>16 he moved to the new clinic.</p> <p>17 <b>Q.</b> And is he the only family practice doctor in the</p> <p>18 south Nampa clinic?</p> <p>19 <b>A.</b> Yes.</p> <p>20 <b>Q.</b> And what about the older Nampa clinic? How</p> <p>21 many --</p> <p>22 <b>A.</b> Well, we have one, again, appointment-based family</p> <p>23 doctor in the Nampa clinic. Did you want me to identify</p> <p>24 his --</p> <p>25 <b>Q.</b> So is that the family practice doctor who would</p>
<p style="text-align: right;">1179</p> <p>1 take the appointment-based visits in that clinic?</p> <p>2 <b>A.</b> Yes, yes. So the south Nampa clinic and the</p> <p>3 original Nampa clinic both have -- each have one</p> <p>4 appointment-based family practice doctor.</p> <p>5 <b>Q.</b> And based on your assessment of the degree of</p> <p>6 penetration and a number of visits, do you believe that</p> <p>7 Primary Health could use more family doctors --</p> <p>8 <b>A.</b> Oh, absolutely.</p> <p>9 <b>Q.</b> -- in those clinics?</p> <p>10 <b>A.</b> Both of them, yes.</p> <p>11 <b>Q.</b> How many at each one?</p> <p>12 <b>A.</b> Oh, well, REDACTED is full. So we would -- we</p> <p>13 could easily take two more appointment-based family doctors,</p> <p>14 one at the Nampa -- old Nampa clinic and one at the new.</p> <p>15 Notwithstanding, we could really use an appointment-based</p> <p>16 family doctor in our Caldwell clinic.</p> <p>17 It's very hard to recruit family doctors to begin</p> <p>18 with and really hard to recruit family doctors to</p> <p>19 Canyon County.</p> <p>20 <b>Q.</b> So I was going to ask you about that. So what are</p> <p>21 you -- what are you doing -- what is Primary Health doing to</p> <p>22 see if it can put more doctors in those two Nampa clinics</p> <p>23 plus the Caldwell clinic?</p> <p>24 <b>A.</b> Well, we have a whole recruiting strategy which</p> <p>25 consists of, you know, obvious promotions on the Internet,</p>	<p style="text-align: right;">1180</p> <p>1 promotions in family practice journals and Internet sites,</p> <p>2 their academy sites.</p> <p>3 We are actually trying to attract graduates from</p> <p>4 the residency programs. We offer a bonus. If you get a</p> <p>5 doctor and they actually stay with us beyond one month, you</p> <p>6 get a bonus.</p> <p>7 <b>Q.</b> And so what -- what has been your -- your success</p> <p>8 rate with getting --</p> <p>9 <b>A.</b> Yeah, not very good.</p> <p>10 <b>Q.</b> -- doctors?</p> <p>11 <b>A.</b> So Canyon County is a good example. We really</p> <p>12 have -- so REDACTED you know, in a sense was not really</p> <p>13 a new recruit to the county. He had already been a family</p> <p>14 doctor there. And so that's -- that was one. The other is</p> <p>15 REDACTED who is at our Nampa clinic. He actually was</p> <p>16 employed by Saint Alphonsus and because of -- and he, for</p> <p>17 various reasons, no longer wanted to work for Saint</p> <p>18 Alphonsus. And because of his noncompetes, he had to work in</p> <p>19 our Nampa clinic. Otherwise, we have not been successful in</p> <p>20 recruiting any family doctors.</p> <p>21 <b>Q.</b> I just want to understand. You say because of a</p> <p>22 noncompetes, REDACTED had to work at your Nampa clinic?</p> <p>23 <b>A.</b> No. He had a noncompetes with his former employee</p> <p>24 [sic], Saint Alphonsus in which he had to be so many miles</p> <p>25 away from wherever his clinic was, and so he had no choice.</p>

<p style="text-align: right;">1181</p> <p>1 If he was to practice in Southwest Idaho, he had to be so</p> <p>2 many miles. So it had to be Nampa or Caldwell or</p> <p>3 Ontario -- somewhere so many miles away. I can't remember</p> <p>4 what the exact mileage was. He could not -- he could not</p> <p>5 practice in Meridian.</p> <p>6 Q. Understood. Based on your recruiting efforts,</p> <p>7 what are -- what are some of the reasons why it's been so</p> <p>8 difficult to recruit to Canyon County and Nampa?</p> <p>9 A. Well, to begin with, we would prefer that the</p> <p>10 physicians speak Spanish because it's a higher Hispanic</p> <p>11 population, and we haven't been necessarily successful in</p> <p>12 that because neither of the two doctors there are really</p> <p>13 that fluent in Spanish.</p> <p>14 Second, as we recruit doctors, particularly</p> <p>15 younger ones, frankly, they would prefer to live and</p> <p>16 practice in Ada County. I mean, that's just a preference.</p> <p>17 Q. Any other reasons why it's been so -- it's been</p> <p>18 harder to recruit to Nampa and Canyon County?</p> <p>19 A. No, I don't think so. No. I can't speculate</p> <p>20 except for to say if you ask where you want to work, the</p> <p>21 majority of the doctors we recruit -- honestly, you know,</p> <p>22 again, Idaho is the lowest per capita of family doctors,</p> <p>23 primary care per capita of the state. It's second or lowest</p> <p>24 in the state. And so it's very hard to recruit primary care</p> <p>25 family doctors to this state. That's a problem beyond just</p>	<p style="text-align: right;">1182</p> <p>1 Canyon County.</p> <p>2 Q. And how long has REDACTED been with Primary</p> <p>3 Health?</p> <p>4 A. Two or three years.</p> <p>5 Q. And REDACTED how long has he been there?</p> <p>6 A. I think three years, three or four years.</p> <p>7 Q. Have you -- in the 30-some years that you've been</p> <p>8 in practice, have you ever seen a primary care physician</p> <p>9 relocate his or her practice from Boise to Nampa?</p> <p>10 A. Well, REDACTED is an example of that.</p> <p>11 Q. But that -- as you said, that was because of</p> <p>12 the -- that was because of the noncompetite that --</p> <p>13 A. That's correct.</p> <p>14 Q. Any other instances that you know about?</p> <p>15 A. In our -- in Primary Health, no. No.</p> <p>16 Q. Earlier you mentioned to the court that you've had</p> <p>17 some experiences in competing with St. Luke's. And are you</p> <p>18 referring to competition as a result of the Saltzer</p> <p>19 acquisition?</p> <p>20 A. No.</p> <p>21 Q. Okay. You're talking about just -- well, first of</p> <p>22 all, what -- competition, what line of service?</p> <p>23 A. In urgent care.</p> <p>24 Q. All right. And what's happening in urgent care?</p> <p>25 REDACTED</p>
<p style="text-align: right;">1183</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7 REDACTED</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14 Q. What -- have you experienced any -- any effects in</p> <p>15 terms of the level of competition or the nature of</p> <p>16 competition as a result of the Saltzer acquisition?</p> <p>17 A. As relates to competition, you mean in terms of</p> <p>18 visits?</p> <p>19 Q. Visits, referrals, covered anything.</p> <p>20 A. Well, specifically -- specifically, in terms of</p> <p>21 Saltzer and our medical group, before they were employed by</p> <p>22 St. Luke's, we had -- even though the Saltzer Group and</p> <p>23 Primary Health Medical Group were competitors -- we compete</p> <p>24 in family practice; they actually have an urgent care. But</p> <p>25 despite that competition, we had a collegial, collaborative</p>	<p style="text-align: right;">1184</p> <p>1 working relationship.</p> <p>2 I had met with their physician leader. Their</p> <p>3 business manager and our business manager communicated on</p> <p>4 issues that may affect in terms of the legislature, the</p> <p>5 Idaho Medical Association. So we had a collaborative</p> <p>6 working relationship. Patients of ours would go to them.</p> <p>7 Patients of theirs would go to ours.</p> <p>8 We don't currently have that collaborative</p> <p>9 relationship that I'm aware of. Certainly, no one has</p> <p>10 talked with us since they have been acquired.</p> <p>11 Q. Earlier you mentioned to the court that you're, I</p> <p>12 believe, the chair or the president of the Saint Alphonsus</p> <p>13 Health Alliance?</p> <p>14 A. Yes, I am.</p> <p>15 Q. Can you tell the court a little bit more about</p> <p>16 what the Health Alliance is?</p> <p>17 A. Well, again, as a result of the Affordable Care</p> <p>18 Act, the hospitals across the country and large networks of</p> <p>19 physicians are configuring themselves to be an Accountable</p> <p>20 Care Organization. And with the idea of if you create an</p> <p>21 organization which involves providers -- and providers are</p> <p>22 hospitals and doctors and psychologists and physical</p> <p>23 therapists and all the rest -- you could -- in a sense, if</p> <p>24 you cooperate, care would be better coordinated, it would</p> <p>25 lead to better outcomes, lower price, and all that.</p>

<p style="text-align: right;">1185</p> <p>1 And by creating -- achieving what is legally</p> <p>2 defined as clinical integration -- excuse me -- then -- this</p> <p>3 is -- again, I'm not a lawyer -- but this then allows you to</p> <p>4 talk about pricing; whereas, today it's not appropriate for</p> <p>5 me to talk about pricing with another -- with a hospital or</p> <p>6 another doctor.</p> <p>7 And so the Saint Alphonsus Health Alliance has the</p> <p>8 intention of being a network which would have doctors and</p> <p>9 hospitals that could be used either by a payor, Blue Cross,</p> <p>10 Blue Shield, or can work towards being an Accountable Care</p> <p>11 Organization and achieve clinical integration.</p> <p>12 And our hope is, as the rest of the company --</p> <p>13 country, is this will lead to better care for all of us.</p> <p>14 And I might say this is very similar to the Select Network</p> <p>15 which we're also members of.</p> <p>16 Q. Does the Health Alliance have other independent</p> <p>17 medical groups as members?</p> <p>18 A. Yes, it does.</p> <p>19 Q. Can you give some examples you know of?</p> <p>20 A. Oh, let's see. I think the -- well, the radiology</p> <p>21 group is an independent medical group. The anesthesia group</p> <p>22 is independent. They have contracts with the hospital. The</p> <p>23 gastroenterology group is completely independent. There are</p> <p>24 other family doctors, primary care groups, scattered about</p> <p>25 Southwest Idaho that are parts.</p>	<p style="text-align: right;">1186</p> <p>1 Q. Are there any St. Luke's providers in the Health</p> <p>2 Alliance?</p> <p>3 A. Yes, yes. My understanding is that St. Luke's</p> <p>4 providers that are in the network. Specifically, in certain</p> <p>5 areas, particularly like Ontario, where there aren't as many</p> <p>6 available physicians, it's very important that, whether</p> <p>7 you're Saint Al's, St. Luke's employed, or Primary Health,</p> <p>8 that the doctors work together. They have to share call.</p> <p>9 And so those accommodations need to be made.</p> <p>10 MR. SU: That's all I have, Your Honor.</p> <p>11 THE COURT: Thank you.</p> <p>12 MR. SU: Thank you, Dr. Peterman.</p> <p>13 THE COURT: Mr. Schafer.</p> <p>14 CROSS-EXAMINATION</p> <p>15 BY MR. SCHAFFER:</p> <p>16 Q. Good afternoon, Dr. Peterman.</p> <p>17 Mr. Su asked you some questions about PHMG, and I think</p> <p>18 you testified that PHMG competes against St. Luke's in</p> <p>19 urgent care; correct?</p> <p>20 A. Well, we compete with St. Luke's in all those --</p> <p>21 all the different areas. But, yes, we do compete in urgent</p> <p>22 care, yes.</p> <p>23 Q. Well, that was going to be my next question. You</p> <p>24 also compete in the areas of primary care?</p> <p>25 A. Absolutely, yes.</p>
<p style="text-align: right;">1187</p> <p>1 Q. Your appointment-based services competes against</p> <p>2 St. Luke's appointment-based --</p> <p>3 THE REPORTER: Excuse me. Would you repeat your</p> <p>4 question.</p> <p>5 THE COURT: We need you to slow way down for the</p> <p>6 court reporter.</p> <p>7 MR. SCHAFFER: My apologies.</p> <p>8 BY MR. SCHAFFER:</p> <p>9 Q. So my second question was, just for the record,</p> <p>10 that PHMG also competes --</p> <p>11 A. Yes.</p> <p>12 Q. -- against St. Luke's in the areas of</p> <p>13 appointment-based primary care?</p> <p>14 A. Yes, as we do compete with Saint Al's and all the</p> <p>15 rest -- West Valley.</p> <p>16 Q. And are you aware that in this case, Dr. Peterman,</p> <p>17 Saint Alphonsus's experts have suggested that PHMG is not</p> <p>18 actually a head-to-head competitor of St. Luke's?</p> <p>19 A. Well, I -- I don't -- I'm sorry. I'm confused.</p> <p>20 Tell me what you're asking me.</p> <p>21 Q. Were you aware that experts on behalf of Saint</p> <p>22 Alphonsus have said that PHMG is not a head-to-head</p> <p>23 competitor of St. Luke's?</p> <p>24 A. I'm not aware of someone saying that, if that's</p> <p>25 what you're asking me.</p>	<p style="text-align: right;">1188</p> <p>1 Q. Would you characterize PHMG as a head-to-head</p> <p>2 competitor of St. Luke's?</p> <p>3 A. Well, in certain areas. But, I mean, they're a</p> <p>4 hospital, for goodness sakes. They have 11,000 employees.</p> <p>5 I don't know how many zeros you would have to add to our</p> <p>6 gross revenue to even come close to St. Luke's. You know, I</p> <p>7 have never had to count that many zeros.</p> <p>8 Q. Clearly, you don't -- you don't compete in</p> <p>9 inpatient services; correct?</p> <p>10 A. No, no.</p> <p>11 Q. But in the areas where you both provide services,</p> <p>12 urgent care and primary care --</p> <p>13 A. Yeah. Yep. Yep.</p> <p>14 THE REPORTER: One at a time, please.</p> <p>15 THE WITNESS: I'm sorry?</p> <p>16 THE REPORTER: One at a time.</p> <p>17 THE COURT: Slow down.</p> <p>18 THE WITNESS: He is from Chicago. I'm from</p> <p>19 Michigan.</p> <p>20 THE COURT: Yeah, bad mix. I'm playing off from</p> <p>21 Mr. Ettinger's "code blue" or whatever the comment was.</p> <p>22 THE WITNESS: Yeah, you know, I went to University</p> <p>23 of Michigan.</p> <p>24 THE COURT: Ah, there we go. Let's slow down and</p> <p>25 not talk over each other.</p>

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1 MR. SCHAFER: Thank you, Your Honor.  
2 BY MR. SCHAFER:  
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1 week -- to do occupational medicine. His location is at our  
2 State Street clinic here in Boise. So he only does  
3 occupational medicine. He doesn't do any appointment-based  
4 family practice.  
5 Q. And with respect to your recruiting in the rest of  
6 the Treasure Valley, PHMG has had tremendous success in that  
7 area, hasn't it?  
8 A. Well, maybe you can relate to this analogy. When  
9 is the last time the Chicago Cubs won the World Series?  
10 Q. It would be 1908. And that's the last question  
11 I'll answer.  
12 A. I think, all kidding aside, if we -- if -- if the  
13 Cubs even win their division, I think -- my experience is  
14 the Cub fans go crazy, they're happy, they think they're  
15 going to win the World Series, and they cheer. It's the  
16 greatest. But they haven't won the World Series since 1908.  
17 At Primary Health, if we recruit one family  
18 practice doctor, I'm going to tell you and I'm going to put  
19 in my report, we have had tremendous success. We just  
20 recruited a family practice doctor. But if you're asking me  
21 have we won the World Series? Have we hit a home run? Do  
22 we have as many appointment-based family doctors that we  
23 need? No.  
24 We never stop recruiting. It is an area in which,  
25 particularly with what's happening with the Affordable Care

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5 REDACTED  
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11 Q. Mr. Su asked you some questions about recruiting.  
12 And you mentioned some of the challenges that PHMG has had  
13 in Canyon County, and you mentioned two of the -- two of the  
14 physicians that are currently working for PHMG in Nampa.  
15 And there is also a third physician in Nampa who is  
16 responsible for, I imagine, the urgent care portion of  
17 business; is that correct?  
18 A. I -- I'm not sure I know who you're referring to  
19 as the third physician.  
20 Q. REDACTED  
21 A. Oh, yeah. Dr. -- do you want me to explain?  
22 Q. Please.  
23 A. Yeah. REDACTED is an occupational medicine  
24 doctor. He just -- he is not located in our Nampa clinic.  
25 He rotates there -- I think, currently, just one day a

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1 Act, we're going to have to get better at.  
2 Q. With respect to -- you mentioned a report. I  
3 think you are possibly aware of the document I'm referring  
4 to. Are you aware that in internal reports that have come  
5 out from you, you have referred to PHMG's success in  
6 recruiting as being tremendously successful?  
7 A. Well, I --  
8 Q. That's just a yes-or-no question. Have you  
9 referred --  
10 A. Which document are you --  
11 THE COURT: One at a time.  
12 THE WITNESS: Which document -- you will have to  
13 show me the document before I can answer it.  
14 BY MR. SCHAFER:  
15 Q. This is Trial Exhibit 2174, and you can see there  
16 is redactions on this document. This is a Primary Health  
17 Medical Group President's Board Report dated April 2009.  
18 The first sentence says, "PHMG has had tremendous success in  
19 recruiting."  
20 A. All right. So you want me to say, yes or no, did  
21 I write that?  
22 Q. Correct.  
23 A. I wrote it, yes.  
24 Q. Who is the audience for these Primary Health  
25 Medical Group President's Board Reports?

<p style="text-align: right;">1193</p> <p>1 <b>A. I send them to the stockholders and the members of</b>  2 <b>the board.</b>  3 <b>Q.</b> Okay. And so you try to be as accurate as  4 possible when reporting on PHMG's activities to the board  5 and stockholders; correct?  6 <b>A. Yes. I try to tell the truth.</b>  7 <b>Q.</b> And if you could pull up 2175, George.  8 If you go to the third page, the third nonredacted  9 paragraph.  10 You see the first sentence there says, "Recruiting was  11 very successful in 2012."  12 Do you see that?  13 <b>A. I see it.</b>  14 <b>Q.</b> And this, again, came from you in a board report  15 to PHMG stockholders and board members; correct?  16 <b>A. Yes.</b>  17 <b>Q.</b> And this -- this states that eight providers were  18 hired -- the second sentence of that paragraph states,  19 "Eight providers were hired for urgent care"; correct?  20 <b>A. Right.</b>  21 <b>Q.</b> And it states that "Many physicians in midlevels  22 expressed interest in PHMG recognizing that there are few  23 alternatives in Southwest Idaho for employment with an  24 independent medical group. Providers from around the  25 country have noted the uniqueness of the group's financial</p>	<p style="text-align: right;">1194</p> <p>1 success and its expanding quality projects"; right?  2 <b>A. Yep. That's accurate.</b>  3 <b>Q.</b> And if you look to the second page --  4 If we can go to the second page, George, the first  5 nonredacted language there.  6 -- this references two new clinics being opened in 2012  7 on time and completely operational; correct?  8 <b>A. Correct.</b>  9 <b>Q.</b> And where were those clinics located?  10 <b>A. That is the downtown clinic on Myrtle and the</b>  11 <b>South Nampa clinic -- no. I'm sorry. No. That would be</b>  12 <b>our West Boise clinic and Myrtle. So what it refers to</b>  13 <b>there is the clinic in West Boise was a new building but a</b>  14 <b>move. It's a changed location.</b>  15 <b>Q.</b> If you can go to the fourth page of this document,  16 George. Slightly different topic than we have been talking  17 about, but while we're on this document. If you could pull  18 up that bottom paragraph.  19 We have a discussion here starting in the second  20 sentence that says, "In 2014, with the availability of  21 Health Exchanges and Medicaid eligibility expansion (even  22 without the Governor's approval), there are estimates that  23 80,000 to 200,000 individuals will have new health insurance  24 benefit and need primary care services."  25 Do you see that?</p>
<p style="text-align: right;">1195</p> <p>1 <b>A. Yep. Yep.</b>  2 <b>Q.</b> And the purpose of putting that statement in this  3 board report was to suggest that there might be an expanding  4 base of patients requiring primary care services in the near  5 future; correct?  6 <b>A. Correct.</b>  7 <b>Q.</b> Once PHMG hires a physician, it's able to get that  8 physician busy, up to capacity, very quickly, isn't it?  9 <b>A. Well, you know, what do you mean by "quickly"?</b>  10 <b>Q.</b> You know, within one year.  11 <b>A. Yeah, yes, yeah. Certainly compared to, I think,</b>  12 <b>other practices, really, in the country, yes. Yeah, we're</b>  13 <b>very good at that.</b>  14 <b>Q.</b> Okay. Just to complete the question to make sure  15 it's clear for the record: Within one year, an average new  16 PHMG physician is up to what you would consider to be full  17 productivity?  18 <b>A. Not -- yeah, 12 to 18 months. Well, and my -- my</b>  19 <b>definition of "full productivity" may differ from the</b>  20 <b>doctor's, but, yes.</b>  21 <b>Q.</b> And, in fact, PHMG, in some cases, has brought new  22 physicians up to producing median revenue within just a  23 month; isn't that true?  24 <b>A. You -- I am assuming you are extracting something</b>  25 <b>I wrote or something. At the moment, I can't think of that,</b></p>	<p style="text-align: right;">1196</p> <p>1 <b>but maybe you have a reference or something.</b>  2 <b>Q.</b> George, could you put up 2177.  3 For the record, 2177 was an exhibit that was used at  4 your deposition that combines both an August Primary Health  5 Medical Group President's Board Report and an October report  6 that I think is reporting on September.  7 George, if you could pull up that -- the first -- the  8 August 2009 header and that one nonredacted sentence on this  9 page. Then if you could go to the September one.  10 So if you look at the top here, Dr. Peterman, there is  11 a report from August 2009 that says "All the new  12 appointment-based providers have started their practices as  13 of the first week in September. The new appointment -- the  14 new providers are located at State Street, Overland,  15 Meridian, Nampa, and Pediatrics."  16 And then if you go down to the September 2009 board  17 report that's dated October 18, 2009, it states, "Two of the  18 three new appointment family practitioners are already  19 producing median revenue."  20 So, from the prior sentence, they started in the first  21 week of September. And by October 18th, they were already  22 producing median revenue; correct?  23 <b>A. Yeah. That's what it says, yes.</b>  24 <b>Q.</b> Mr. Su also asked you some questions about the new  25 Nampa facility that PHMG opened this summer that I believe</p>



<p style="text-align: right;">1197</p> <p>1 you called the "South Nampa facility"; is that correct?</p> <p>2 <b>A. Yes.</b></p> <p>3 <b>Q.</b> And that new Nampa facility is roughly the same</p> <p>4 size as the other facilities within the PHMG clinic</p> <p>5 enterprise; correct?</p> <p>6 <b>A. Correct.</b></p> <p>7 <b>Q.</b> And as you talked about with Mr. Su, PHMG already</p> <p>8 had an existing clinic in Nampa; correct?</p> <p>9 <b>A. Correct.</b></p> <p>10 <b>Q.</b> And that original PHMG clinic in Nampa has been</p> <p>11 successful, hasn't it?</p> <p>12 <b>A. Oh, yes.</b></p> <p>13 <b>Q.</b> In fact, have you seen that clinic referred to as</p> <p>14 the best clinic in PHMG's entire network?</p> <p>15 <b>A. Well, I think in terms of "best," again, you take</b></p> <p>16 <b>things out of context, so I don't always know where the</b></p> <p>17 <b>context is. But I get it; I get what you're trying to do.</b></p> <p>18 <b>So I think, by "best," if I understand, my terms</b></p> <p>19 <b>of "best" I think has to do with financial performance,</b></p> <p>20 <b>which is I think what you're asking. Is that what you're</b></p> <p>21 <b>asking?</b></p> <p>22 <b>Q.</b> Well, let me ask it a different way. Has</p> <p>23 that -- the original Nampa location --</p> <p>24 <b>A. Yes.</b></p> <p>25 <b>Q.</b> -- has that been the highest revenue-producing</p>	<p style="text-align: right;">1198</p> <p>1 clinic?</p> <p>2 <b>A. At times. Is it today, no? But, yes, absolutely,</b></p> <p>3 <b>it's one of our better performers. Absolutely correct.</b></p> <p>4 <b>Q.</b> And was part of the determination of whether to</p> <p>5 open a second Nampa clinic whether there was sufficient need</p> <p>6 for another clinic in Nampa?</p> <p>7 <b>A. That was too quick for me. Ask it again.</b></p> <p>8 <b>Q.</b> Was part of the determination as to whether PHMG</p> <p>9 would open a second Nampa clinic whether there was</p> <p>10 sufficient need for another clinic in Nampa?</p> <p>11 <b>A. Well, that's not the right question to ask.</b></p> <p>12 <b>That's not our model. So my answer would be no. And I can</b></p> <p>13 <b>tell you why I would say no.</b></p> <p>14 <b>Q.</b> Well, I'll just stop you there.</p> <p>15 MR. SCHAFER: Can you play TP12, please.</p> <p>16 THE WITNESS: I knew you were going to pull up</p> <p>17 something I said. Good for you.</p> <p>18 (Video clip played as follows:)</p> <p>19 <b>Q.</b> "As far as the discussions about whether</p> <p>20 or not to open this second clinic, was part of</p> <p>21 what, you know, PHMG management was discussing</p> <p>22 or discussing with the board whether or not</p> <p>23 there was sufficient need in Nampa for a second</p> <p>24 clinic?"</p> <p>25 <b>A. "Yes."</b></p>
<p style="text-align: right;">1199</p> <p>1 (End of video clip.)</p> <p>2 THE WITNESS: So what we have --</p> <p>3 MR. SCHAFER: Let me just stop there.</p> <p>4 THE WITNESS: I can't respond?</p> <p>5 THE COURT: No, no. Let's -- no.</p> <p>6 MR. SCHAFER: Just for the record --</p> <p>7 THE COURT: Just a moment, Counsel. Let's get a</p> <p>8 question before the witness, and perhaps we can move a</p> <p>9 little more efficiently.</p> <p>10 Your attorney will have a chance to come back and give</p> <p>11 you a chance to explain anything you want to.</p> <p>12 THE WITNESS: Okay.</p> <p>13 THE COURT: So, Mr. Su, I --</p> <p>14 THE WITNESS: Well, Mr. Su is not my attorney.</p> <p>15 THE COURT: The attorney who has called you. I</p> <p>16 should say. Mr. Randolph, I guess, may be your attorney,</p> <p>17 but -- and, fortunately, he will not be allowed to</p> <p>18 participate.</p> <p>19 THE WITNESS: I apologize, Judge.</p> <p>20 THE COURT: Go ahead.</p> <p>21 MR. SCHAFER: I do want to say just for the</p> <p>22 record, Your Honor, because we have had some issues with the</p> <p>23 video used during live testimony, I did want to identify</p> <p>24 that that was page 132, lines 15 to 21, of Dr. Peterman's</p> <p>25 deposition.</p>	<p style="text-align: right;">1200</p> <p>1 THE COURT: You know, I appreciate that, and it</p> <p>2 just struck me that I have not been doing a very good job of</p> <p>3 monitoring that as to where. So we will have to correct</p> <p>4 that for the record.</p> <p>5 Mr. Stein, I think you have made very liberal use of</p> <p>6 that, so we'll need to go back, and we'll have to somehow</p> <p>7 make sure that we've got a record as to what the excerpts</p> <p>8 were that were being shown to the witness.</p> <p>9 MR. STEIN: Yes. Ms. Duke and I spoke about this</p> <p>10 with the court reporter, and we will work this out</p> <p>11 internally or between the two of us for the clips that have</p> <p>12 already been played. And going forward, we will do that.</p> <p>13 THE COURT: I appreciate that. It just struck me,</p> <p>14 when Mr. Schafer made that comment, that that's been a</p> <p>15 problem throughout the trial and one that I just, frankly,</p> <p>16 have not been focused in on.</p> <p>17 Go ahead, Mr. Schafer. Let's get a question before the</p> <p>18 witness.</p> <p>19 MR. SCHAFER: Yes. Thank you, Your Honor.</p> <p>20 BY MR. SCHAFER:</p> <p>21 <b>Q.</b> So that was a question and answer that you were</p> <p>22 asked and you gave at your deposition; correct?</p> <p>23 <b>A. Correct.</b></p> <p>24 <b>Q.</b> And PHMG hired consultants to investigate the</p> <p>25 question of whether there was sufficient need for a second</p>

<p>1201</p> <p>1 clinic in Nampa. And those consultants believed that there</p> <p>2 was sufficient patient base in Nampa to support a second</p> <p>3 clinic, right?</p> <p>4 <b>A. Right. But can I answer your original question?</b></p> <p>5 <b>Q.</b> I would prefer to keep going.</p> <p>6 THE COURT: Mr. Su will come back and allow you to</p> <p>7 explain that.</p> <p>8 Go ahead.</p> <p>9 BY MR. SCHAFER:</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16 REDACTED</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1202</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11 REDACTED</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>1203</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10 REDACTED</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1204</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10 REDACTED</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22 <b>Q.</b> Okay. Thank you.</p> <p>23 And you expect that the new South Nampa clinic will</p> <p>24 draw patients not only from Nampa but from the outlying</p> <p>25 areas of Canyon County; correct?</p>

<div>1205</div> <div>1     <b>A.</b> I'm not sure what you mean by that question.</div> <div>2     <b>Q.</b> George, could you put up 5087. If you could blow</div> <div>3 up the article.</div> <div>4         This is an article, Dr. Peterman, which purports to</div> <div>5 quote you.</div> <div>6     <b>A.</b> Oh.</div> <div>7     <b>Q.</b> And I do want to -- I'll just ask if this is an</div> <div>8 accurate quote. If you look down in the second paragraph,</div> <div>9 it states, "This new Nampa clinic will allow us to better</div> <div>10 serve the community by providing a new convenient location</div> <div>11 for our patients that live in South Nampa and the outlying</div> <div>12 areas of Canyon County." Do you see that?</div> <div>13     <b>A.</b> I see it.</div> <div>14     <b>Q.</b> Does that accurately reflect a statement that you</div> <div>15 gave?</div> <div>16     <b>A.</b> It accurately reflects the statement, but you</div> <div>17 have --</div> <div>18     <b>Q.</b> Thank you. That's fine.</div> <div>19     <b>A.</b> Right.</div> <div>20         THE COURT: Counsel, what's the exhibit number on</div> <div>21 this?</div> <div>22         MR. SCHAFER: This is not a trial exhibit. This</div> <div>23 is just a cross exhibit -- cross-exam exhibit.</div> <div>24         THE COURT: Well, it still needs to be identified</div> <div>25 and have an exhibit number for the record. Perhaps if you</div>	<div>1206</div> <div>1     could take care of assigning that a number on the break and</div> <div>2 then -- just so we can keep the record straight.</div> <div>3         And then Exhibit 2181 was offered earlier -- not</div> <div>4 offered but referred to, not admitted. There is an</div> <div>5 objection, hearsay objection. Is there -- are you going to</div> <div>6 stand on that objection or withdraw it?</div> <div>7         MR. SU: I'm sorry, Your Honor. I was --</div> <div>8         THE COURT: Exhibit 2181 was referred to on the</div> <div>9 cross just a moment ago, which had to do with, I think, the</div> <div>10 South 12th Avenue presentation. And there was a hearsay</div> <div>11 objection noted. Is that withdrawn? Can we admit --</div> <div>12         MR. SU: That is withdrawn, Your Honor.</div> <div>13         THE COURT: All right. We'll admit Exhibit 2181.</div> <div>14 (Defendants' Exhibit No. 2181 admitted.)</div> <div>15         MR. SU: I would ask opposing counsel that, for</div> <div>16 any cross-exam exhibits, that I be allowed to see those</div> <div>17 copies before they are published.</div> <div>18         THE COURT: Yes. Counsel, if you would.</div> <div>19         MR. SCHAFER: Yes. I'll discuss it with Mr. Su on</div> <div>20 a break.</div> <div>21         THE COURT: Dr. Peterman, I know it can be</div> <div>22 frustrating, but it goes much more quickly if, when a</div> <div>23 question is asked very specifically, you answer it directly.</div> <div>24 It's quite possible Mr. Su will just go through and identify</div> <div>25 the points in which you had expressed a concern that you</div>
<div>1207</div> <div>1     wanted to clarify, and he will give you a chance to fully</div> <div>2 clarify that on redirect.</div> <div>3         Proceed, Mr. Schafer.</div> <div>4         THE WITNESS: Judge, I think it's like to trying</div> <div>5 to talk to my kids, who both have their Ph.D.s. I can't get</div> <div>6 a word in edgewise.</div> <div>7         THE COURT: That's how the court reporter feels.</div> <div>8 So proceed.</div> <div>9         MR. SCHAFER: Thank you, Your Honor.</div> <div>10 BY MR. SCHAFER:</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17                     REDACTED</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div>	<div>1208</div> <div>1</div> <div>2</div> <div>3</div> <div>4</div> <div>5                     REDACTED</div> <div>6</div> <div>7</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12 BY MR. SCHAFER:</div> <div>13         <b>Q.</b> You gave that testimony; correct, Dr. Peterman?</div> <div>14         <b>A.</b> I did. As I -- this is -- you know, I have been</div> <div>15 through this with 36 years from my wife. You think I would</div> <div>16 get it. Apparently not.</div> <div>17</div> <div>18</div> <div>19</div> <div>20                     REDACTED</div> <div>21</div> <div>22</div> <div>23         <b>A.</b> Yes.</div> <div>24         <b>Q.</b> And PHMG -- I believe you testified with Mr. Su</div> <div>25 that PHMG's EMR is integrated across PHMG's 13 clinics; is</div>



<p style="text-align: right;">1209</p> <p>1 that right?</p> <p>2 <b>A.</b> Oh, yes, uh-huh.</p> <p>3 <b>Q.</b> And with respect to the -- the quality efforts and</p> <p>4 quality scores that you testified about, do you think having</p> <p>5 that EMR across your integrated clinics has been helpful in</p> <p>6 achieving those quality results?</p> <p>7 <b>A.</b> Yeah. I would be very careful in equating the use</p> <p>8 of electronic health records with quality. Electronic</p> <p>9 health records is a tool that one uses for communications,</p> <p>10 and achieving quality is quite something different.</p> <p>11 It certainly is easier to have tools that -- that</p> <p>12 work. But, ultimately, no, I would -- sure, it is easier</p> <p>13 and -- to achieve quality with electronic health records,</p> <p>14 but -- but there has to be the dedication in the whole</p> <p>15 organization to achieve it.</p> <p>16 But, yes, electronic health records definitely</p> <p>17 helps.</p> <p>18 <b>Q.</b> Absolutely. And with respect to the quality</p> <p>19 efforts that you talked about, a number of those efforts --</p> <p>20 not all of them -- are driven through the EHR that you have</p> <p>21 in your clinics; correct?</p> <p>22 <b>A.</b> Absolutely. It's how we collect the data and mine</p> <p>23 it and all the rest, yes.</p> <p>24 <b>Q.</b> And with respect to the Idaho Health Data</p> <p>25 Exchange, that doesn't allow sort of driving those sort of</p>	<p style="text-align: right;">1210</p> <p>1 clinical quality efforts, does it?</p> <p>2 <b>A.</b> Well, that's a puzzling question for me. It</p> <p>3 doesn't impede it. You're saying it doesn't allow it? What</p> <p>4 do you mean?</p> <p>5 <b>Q.</b> It, itself, doesn't facilitate the way that you</p> <p>6 drive it through your own EMR system; correct?</p> <p>7 <b>A.</b> Oh, no. No, that's not correct. It does</p> <p>8 facilitate it. It provides more access for information,</p> <p>9 absolutely.</p> <p>10 <b>Q.</b> Could PHMG do what it currently does with</p> <p>11 eClinicalWorks by relying only on the Idaho Health Data</p> <p>12 Exchange?</p> <p>13 <b>A.</b> Now, say that again.</p> <p>14 <b>Q.</b> Could PHMG do what it currently does with</p> <p>15 eClinicalWorks using only the Idaho Health Data Exchange?</p> <p>16 <b>A.</b> Well, the Idaho Health Data Exchange isn't an</p> <p>17 electronic medical record, so the question you just asked me</p> <p>18 doesn't make any sense.</p> <p>19 <b>Q.</b> So the Idaho Health Data Exchange is not sort of a</p> <p>20 replacement for an electronic medical record; correct?</p> <p>21 <b>A.</b> Correct.</p> <p>22 <b>Q.</b> And, in fact, to access data from the Idaho Health</p> <p>23 Data Exchange, a physician or a group actually has to go to</p> <p>24 the Idaho Health Data Exchange and pull that data; correct?</p> <p>25 <b>A.</b> Yes, you have to get online. But that's not</p>
<p style="text-align: right;">1211</p> <p>1 totally correct. Because as we speak right now, there is an</p> <p>2 interface with the Idaho Health Data Exchange, to a certain</p> <p>3 degree, with both St. Luke's and Saint Al's in which</p> <p>4 information can populate electronic health records directly.</p> <p>5 In fact, we're beta testing that with Saint Al's.</p> <p>6 I would also bring you up to speed that Primary</p> <p>7 Health is the first medical group that is working directly</p> <p>8 with the Idaho Health Data Exchange that will be by</p> <p>9 direction so that, automatically, our information will go to</p> <p>10 the exchange on our patients. In a sense, it will go back</p> <p>11 and forth.</p> <p>12 So what you said wasn't quite accurate.</p> <p>13 <b>Q.</b> You mentioned an interface there. You earlier</p> <p>14 mentioned interfaces that PHMG had set up with both Saint</p> <p>15 Al's and St. Luke's in certain areas; correct?</p> <p>16 <b>A.</b> Yes.</p> <p>17 <b>Q.</b> And who -- who sort of took the laboring oar on</p> <p>18 setting up those interfaces? Was that something that PHMG's</p> <p>19 IT folks worked together with St. Luke's and Saint Al's IT</p> <p>20 folks?</p> <p>21 <b>A.</b> Yes.</p> <p>22 <b>Q.</b> And was that a time-intensive endeavor?</p> <p>23 <b>A.</b> Some of it, yes.</p> <p>24 <b>Q.</b> Do you know how much money it cost to set up those</p> <p>25 interfaces?</p>	<p style="text-align: right;">1212</p> <p>1 <b>A.</b> I don't.</p> <p>2 <b>Q.</b> You also mentioned, I think, that at a certain</p> <p>3 point, that when you were looking at an electronic medical</p> <p>4 record, Saltzer was also out looking for an electronic</p> <p>5 medical record. Do you know what electronic medical record</p> <p>6 Saltzer uses?</p> <p>7 <b>A.</b> Yes.</p> <p>8 <b>Q.</b> And what is that?</p> <p>9 <b>A.</b> EClinicalWorks.</p> <p>10 <b>Q.</b> And do you know what version they're on?</p> <p>11 <b>A.</b> I do not.</p> <p>12 <b>Q.</b> Do you know if they're on the same version as</p> <p>13 PHMG?</p> <p>14 <b>A.</b> Don't know.</p> <p>15 <b>Q.</b> And with respect to the integration that we talked</p> <p>16 about within PHMG's 13 clinics on the EMR, is the EMR within</p> <p>17 PHMG's clinics more integrated than PHMG's EMR is with, say,</p> <p>18 St. Luke's EMR or Saint Al's EMR?</p> <p>19 <b>A.</b> What do you mean by "integrated"?</p> <p>20 <b>Q.</b> That, you know, other than the interfaces you</p> <p>21 discussed earlier with Saint Al's and St. Luke's, that --</p> <p>22 that is not -- you are not on the same electronic medical</p> <p>23 record with Saint Al's or St. Luke's; correct?</p> <p>24 <b>A.</b> We are not on the same electronic health record as</p> <p>25 St. Luke's and Saint Al's.</p>

<p style="text-align: right;">1213</p> <p>1 <b>Q.</b> And is PHMG on the same electronic medical record</p> <p>2 with other Saint Alphonsus Health Alliance providers other</p> <p>3 than PHMG?</p> <p>4 <b>A.</b> No. But what difference does it make?</p> <p>5 <b>Q.</b> I told you my "1908" was the last question I was</p> <p>6 answering.</p> <p>7 Let me ask you a question on policies that PHMG has</p> <p>8 regarding investing in competing medical facilities.</p> <p>9 PHMG has policies that prohibit its physicians from</p> <p>10 investing in competing medical facilities; correct?</p> <p>11 <b>A.</b> We do. I don't have the policy right in front of</p> <p>12 me. I'm sure you're going to show it to me in something</p> <p>13 pretty quick here.</p> <p>14 <b>Q.</b> Well, and the reason why PHMG has such a policy is</p> <p>15 that it avoids creating conflicts of interest by not having</p> <p>16 employees owning interest in competitors; correct?</p> <p>17 <b>A.</b> Yeah. It -- it creates challenges, yes. But</p> <p>18 there are --</p> <p>19 <b>Q.</b> That's fine. I'm --</p> <p>20 <b>A.</b> The words "conflict of interest," I think, are</p> <p>21 your words. I would have to read the policy. I really</p> <p>22 don't want to comment on something -- I have learned now. I</p> <p>23 didn't listen to my wife, but I am listening to you. I'm</p> <p>24 not going to comment on something until you show me the</p> <p>25 document.</p>	<p style="text-align: right;">1214</p> <p>1 MR. SU: Your Honor, I'm going to object to this</p> <p>2 question as being outside the scope of my direct. If</p> <p>3 Mr. Schafer wants to move on to his direct, he can do that,</p> <p>4 but --</p> <p>5 THE COURT: Mr. Schafer, do you intend to call</p> <p>6 this witness as one of your witnesses and want to proceed to</p> <p>7 direct examination now?</p> <p>8 MR. SCHAFER: That's all I have on this topic,</p> <p>9 Your Honor. But this witness is one that we noticed.</p> <p>10 THE COURT: I'm just asking. If you do, you will</p> <p>11 need to proceed by nonleading questions and so indicate.</p> <p>12 MR. SCHAFER: That's fair, Your Honor.</p> <p>13 THE COURT: Proceed.</p> <p>14 BY MR. SCHAFER:</p> <p>15 <b>Q.</b> Dr. Peterman, I think you -- you addressed with</p> <p>16 Mr. Su the fact that, at a certain point, PHMG essentially</p> <p>17 had been part of an insurance company and raised the funds</p> <p>18 to purchase itself from the insurance company; correct?</p> <p>19 <b>A.</b> (No audible response.)</p> <p>20 <b>Q.</b> Do you believe that the business of running an</p> <p>21 insurance company is different from the business of running</p> <p>22 a medical group?</p> <p>23 <b>A.</b> Yes.</p> <p>24 <b>Q.</b> And did you believe, at the time that PHMG raised</p> <p>25 the funds to purchase itself from the insurance company,</p>
<p style="text-align: right;">1215</p> <p>1 that PHMG could better serve its patients as an independent</p> <p>2 medical group than as a subsidiary of an insurance company?</p> <p>3 <b>A.</b> Yes.</p> <p>4 <b>Q.</b> Currently, is PHMG part of any risk-based</p> <p>5 contracts?</p> <p>6 <b>A.</b> I don't -- you know, again, we take over 800</p> <p>7 different insurances, and I don't think there is any</p> <p>8 downside risk. We're definitely in plans in which, quote,</p> <p>9 there is upside for performance, certainly through Medicare</p> <p>10 Advantage, PQRS, and those plans. But we're not in any,</p> <p>11 quote, downside risk if -- you follow what I'm saying?</p> <p>12 <b>Q.</b> I do.</p> <p>13 <b>A.</b> Okay.</p> <p>14 <b>Q.</b> With respect to the Saint Alphonsus Health</p> <p>15 Alliance, I believe you mentioned that you were chairman of</p> <p>16 the board of the Alliance; is that correct?</p> <p>17 <b>A.</b> Yes.</p> <p>18 <b>Q.</b> And you mentioned -- when Mr. Su asked you some</p> <p>19 questions about the Alliance, you mentioned the concept of</p> <p>20 ACOs; right?</p> <p>21 <b>A.</b> Yes.</p> <p>22 <b>Q.</b> The Saint Alphonsus Health Alliance decided not to</p> <p>23 become an ACO, correct, for Medicare purposes?</p> <p>24 <b>A.</b> For Medicare purposes, yes.</p> <p>25 <b>Q.</b> And do you believe that what Saint Alphonsus is</p>	<p style="text-align: right;">1216</p> <p>1 trying to do with the Healthcare Alliance can be compared to</p> <p>2 what St. Luke's is doing with its health system?</p> <p>3 <b>A.</b> Oh, I -- I think that's really speculative. I'm</p> <p>4 just a pediatrician here. For me to speculate on what</p> <p>5 St. Luke's is trying to do -- oh, my goodness, I don't want</p> <p>6 to do that.</p> <p>7 <b>Q.</b> George, could you pull up --</p> <p>8 <b>A.</b> Oh, golly.</p> <p>9 MR. SCHAFER: Just for the record, before I play</p> <p>10 it, this is page 224, lines 11 to 24, of Dr. Peterman's</p> <p>11 deposition.</p> <p>12 (Video clip played as follows:)</p> <p>13 <b>Q.</b> "But let me get back to -- I know you are</p> <p>14 correct that the St. Luke's system, the St.</p> <p>15 Luke's model -- not talking about Select, but</p> <p>16 St. Luke's -- is a very different model than</p> <p>17 the Saint Al's Health Alliance; correct?"</p> <p>18 <b>A.</b> "They're not the same -- I'm not going to</p> <p>19 let you -- they're two different -- they're not</p> <p>20 the same. It's like saying that -- one is a</p> <p>21 network. Blue Cross is a network. There are</p> <p>22 probably 5,000 doctors in Blue Cross network.</p> <p>23 Idaho Physicians Network has, I think, 2,000</p> <p>24 providers. It's very successful networks. No</p> <p>25 one remotely would compare a network to a</p>

<p style="text-align: right;">1217</p> <p>1 medical group."</p> <p>2 (Video clip concluded.)</p> <p>3 BY MR. SCHAFER:</p> <p>4 <b>Q.</b> Do you remember giving that testimony?</p> <p>5 <b>A.</b> Yeah. That's a good one. I like that one.</p> <p>6 <b>Q.</b> Do you remember -- did I ask that question, and</p> <p>7 did you give that response?</p> <p>8 <b>A.</b> Well --</p> <p>9 THE COURT: Counsel -- Counsel, just so we're</p> <p>10 clear, I'm not sure that's impeaching. I think the witness</p> <p>11 simply offered a -- an observation that is not truly</p> <p>12 impeaching, and I -- I'm going to come to Dr. Peterman's</p> <p>13 defense here --</p> <p>14 THE WITNESS: Thank you, Judge.</p> <p>15 THE COURT: Let's proceed, though. And for the</p> <p>16 record, I still am not sure we have identified the clip that</p> <p>17 was just played.</p> <p>18 MR. SCHAFER: I think I did before.</p> <p>19 THE COURT: If you did, I missed it.</p> <p>20 BY MR. SCHAFER:</p> <p>21 <b>Q.</b> Dr. Peterman, when you were discussing in that</p> <p>22 clip the fact that no one would remotely compare a network</p> <p>23 to a medical group, were you talking about that no one would</p> <p>24 compare the Saint Alphonsus health network -- Health</p> <p>25 Alliance to the St. Luke's Medical Group?</p>	<p style="text-align: right;">1218</p> <p>1 <b>A.</b> Well, you can correct me if I'm getting things not</p> <p>2 right here, but I believe in the -- in the videotape, you</p> <p>3 did ask me a question about -- it was in a series of</p> <p>4 questions in which you talked about St. Luke's and their</p> <p>5 employment model, their medical group, and you tried to</p> <p>6 compare it to Saint Alphonsus Health Alliance.</p> <p>7 And what I pointed out to you, they're not</p> <p>8 remotely comparable. One is a network. One is an employed</p> <p>9 medical group.</p> <p>10 Now, that's what you asked me in that videotape.</p> <p>11 If I had the opportunity to do what you did, I would point</p> <p>12 that out to you, but I don't have that opportunity.</p> <p>13 <b>Q.</b> I think you just did, and I appreciate it.</p> <p>14 Because --</p> <p>15 <b>A.</b> Having said that --</p> <p>16 THE COURT: Just a moment. Get a question --</p> <p>17 THE WITNESS: But, Judge, this is an example of</p> <p>18 how he is taking things of what I have said out of context.</p> <p>19 And how does this serve anyone's purpose?</p> <p>20 THE COURT: All right. I have essentially made</p> <p>21 that point for you. So let's --</p> <p>22 THE WITNESS: Okay.</p> <p>23 THE COURT: -- move on, I think. Let's get a</p> <p>24 question --</p> <p>25 THE WITNESS: I'm a terrible witness.</p>
<p style="text-align: right;">1219</p> <p>1 THE COURT: Let me explain. One of the problems</p> <p>2 is both parties are what I call "on the clock." They have a</p> <p>3 limited amount of time.</p> <p>4 THE WITNESS: Okay.</p> <p>5 THE COURT: So that's one of the reasons I insist</p> <p>6 on witnesses answering the question directly. It allows</p> <p>7 Mr. Schafer to get through his examination more quickly.</p> <p>8 And Mr. Su, I am virtually certain, will give you a full</p> <p>9 opportunity to explain anything you want.</p> <p>10 THE WITNESS: Okay. I apologize.</p> <p>11 THE COURT: All right.</p> <p>12 BY MR. SCHAFER:</p> <p>13 <b>Q.</b> And I just have one final question, I think, which</p> <p>14 is: Thus far, you don't believe that the Saint Alphonsus</p> <p>15 Health Alliance has demonstrated any ability to coordinate</p> <p>16 care among different alliance members, do you?</p> <p>17 <b>A.</b> No, I don't agree with that.</p> <p>18 MR. SCHAFER: George, if you could play -- for the</p> <p>19 record, this is page 227, line 16 to 24, of Dr. Peterman's</p> <p>20 deposition.</p> <p>21 (Video clip played as follows:)</p> <p>22 <b>Q.</b> "So I know it's, again, getting back to</p> <p>23 sort of different concepts, but do you believe</p> <p>24 that the Alliance has demonstrated any ability</p> <p>25 to coordinate care among the different alliance</p>	<p style="text-align: right;">1220</p> <p>1 members?"</p> <p>2 <b>A.</b> "Saint Alphonsus Health Alliance?"</p> <p>3 <b>Q.</b> "Yes."</p> <p>4 <b>A.</b> "Oh, my goodness, no. It's been in</p> <p>5 existence for a very short period."</p> <p>6 (Video clip concluded.)</p> <p>7 BY MR. SCHAFER:</p> <p>8 <b>Q.</b> Did you give that answer at your deposition,</p> <p>9 Dr. Peterman?</p> <p>10 <b>A.</b> Yes, I did.</p> <p>11 MR. SCHAFER: No further questions.</p> <p>12 THE COURT: Mr. Su.</p> <p>13 MR. SU: Thank you, Your Honor.</p> <p>14 REDIRECT EXAMINATION</p> <p>15 BY MR. SU:</p> <p>16 <b>Q.</b> Dr. Peterman, one of Mr. Schafer's first questions</p> <p>17 was about whether the physicians at Primary Health are</p> <p>18 employed. In your experience, when the doctors form a</p> <p>19 medical group, do they become employees of the medical</p> <p>20 group?</p> <p>21 <b>A.</b> Yes.</p> <p>22 <b>Q.</b> But that's different from being employed by a</p> <p>23 hospital; right?</p> <p>24 <b>A.</b> In my mind, it is, yes.</p> <p>25 <b>Q.</b> Mr. Schafer asked you a number of questions about</p>

<div>1221</div> <div>1 the reports you have given to the Primary Health board about</div> <div>2 the recruiting successes.</div> <div>3</div> <div>4</div> <div>5</div> <div>6</div> <div>7</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12 REDACTED</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div>	<div>1222</div> <div>1</div> <div>2</div> <div>3</div> <div>4</div> <div>5</div> <div>6</div> <div>7</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12 REDACTED</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div>
<div>1223</div> <div>1</div> <div>2</div> <div>3</div> <div>4</div> <div>5</div> <div>6</div> <div>7</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12 REDACTED</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div>	<div>1224</div> <div>1</div> <div>2</div> <div>3</div> <div>4</div> <div>5</div> <div>6</div> <div>7</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12 REDACTED</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div>

<p style="text-align: right;">1225</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: center;">REDACTED</p> <p><b>Q.</b> In your -- as the CEO of Primary Health, do you believe that Primary Health has achieved a clinical</p>	<p style="text-align: right;">1226</p> <p>1 integration of its physicians?</p> <p>2 <b>A.</b> Well, clinical integration, I believe, as it</p> <p>3 relates to accountable care organizations, is actually a</p> <p>4 legal term or a statutory term, and I can't speak to that.</p> <p>5 The point I was trying to -- so -- so I can't say</p> <p>6 that Primary Health, as a medical group, is, quote,</p> <p>7 clinically integrated in the legal sense. But have we -- do</p> <p>8 I believe we're coordinated and working together and</p> <p>9 demonstrating outcomes? Absolutely.</p> <p>10 And that was the same point I was trying to make</p> <p>11 to Mr. Schafer, which I wasn't supposed to make, which was:</p> <p>12 Does Primary Health work in a coordinated fashion with</p> <p>13 physicians from the Saint Alphonsus Health Alliance? Yes,</p> <p>14 we do.</p> <p>15 The other part of that is: Does Primary Health</p> <p>16 Medical Group doctors work in a coordinated, integrated</p> <p>17 fashion with doctors from St. Luke's? Absolutely.</p> <p>18 But does it fulfill the statutory legal</p> <p>19 requirement of coordinated care? Let's go to my videotape.</p> <p>20 Absolutely not.</p> <p>21 MR. SU: Thank you, Dr. Peterman.</p> <p>22 That's all I have, Your Honor.</p> <p>23 THE COURT: Any recross?</p> <p>24 MR. SCHAFFER: No, Your Honor.</p> <p>25 THE COURT: Dr. Peterman, you may step down.</p>
<p style="text-align: right;">1227</p> <p>1 Thank you.</p> <p>2 THE WITNESS: Thank you.</p> <p>3 THE COURT: I assume the witness is released from</p> <p>4 any subpoena and will not be subject to recall.</p> <p>5 MR. SCHAFFER: Yes, Your Honor.</p> <p>6 THE COURT: All right. Thank you.</p> <p>7 Call your next witness.</p> <p>8 MS. DUKE: Blaine Petersen. And we are getting</p> <p>9 him.</p> <p>10 THE COURT: All right. Counsel, is the courtroom</p> <p>11 now going to be open?</p> <p>12 MR. ETTINGER: Your Honor, it will be for the</p> <p>13 first part of his testimony.</p> <p>14 THE COURT: All right.</p> <p>15 MR. ETTINGER: The rest of it will be about</p> <p>16 detailed managed care.</p> <p>17 THE COURT: That's fine. I am not questioning at</p> <p>18 all counsel's decision. It's very obvious from the evidence</p> <p>19 presented why it was necessary and essential to close the</p> <p>20 courtroom for much of the testimony. I only wish there was</p> <p>21 some way to not inconvenience the public in the way that we</p> <p>22 do, but it seems unavoidable.</p> <p>23 ***** COURTROOM OPEN TO THE PUBLIC *****</p> <p>24 MR. ETTINGER: You want Mr. Petersen to come up</p> <p>25 now?</p>	<p style="text-align: right;">1228</p> <p>1 THE COURT: Yes. I'm sorry. Mr. Petersen, please</p> <p>2 come forward. I wasn't sure you were in the room yet.</p> <p>3 Please step before Ms. Gearhart, be sworn as a witness, and</p> <p>4 she will direct you where to go from there.</p> <p>5 BLAINE QUENTIN PETERSEN,</p> <p>6 having been first duly sworn to tell the whole truth,</p> <p>7 testified as follows:</p> <p>8 THE CLERK: Please state your complete name and</p> <p>9 spell your name for the record.</p> <p>10 THE WITNESS: Blaine Quentin Petersen,</p> <p>11 B-L-A-I-N-E; Quentin, Q-U-E-N-T-I-N; Petersen,</p> <p>12 P-E-T-E-R-S-E-N.</p> <p>13 THE COURT: I sometimes worry when we ask</p> <p>14 witnesses to do that. They think it's the first quiz to see</p> <p>15 if they are competent to testify.</p> <p>16 THE WITNESS: I think I passed.</p> <p>17 THE COURT: You did.</p> <p>18 You may inquire of the witness.</p> <p>19 MR. ETTINGER: Thank you, Your Honor. We have</p> <p>20 just a couple of exhibits for the witness in a book. Can we</p> <p>21 bring that up?</p> <p>22 THE COURT: Mr. Metcalf, could you help us out.</p> <p>23 MR. ETTINGER: Your Honor, one small thing.</p> <p>24 Mr. Petersen wanted me to mention he had hip surgery not too</p> <p>25 long ago, and so he tends to lean back to be more</p>

<p style="text-align: right;">1229</p> <p>1 comfortable. And that's not an indication of his attitude</p> <p>2 or anything.</p> <p>3 THE COURT: It is not. The only concern I have is</p> <p>4 staying close to the microphone. We actually have a</p> <p>5 lavalier mic we could wire you up to if we needed to.</p> <p>6 Let's see how it works. And then if it becomes a problem,</p> <p>7 I'll have Ms. Gearhart find where the lavalier mic is. I'm</p> <p>8 not sure we can put our hands on it immediately, but I'm</p> <p>9 sure we could given a few minutes.</p> <p>10 Go ahead and proceed.</p> <p>11 MR. ETTINGER: Thank you, Your Honor.</p> <p>12 DIRECT EXAMINATION</p> <p>13 BY MR. ETTINGER:</p> <p>14 Q. Mr. Petersen, what's your position?</p> <p>15 A. I am the system chief financial officer for Saint</p> <p>16 Alphonsus Health System.</p> <p>17 Q. And how long have you had that position?</p> <p>18 A. Just under three years.</p> <p>19 Q. What generally are your duties in the position?</p> <p>20 A. The responsibility of a traditional CFO duties for</p> <p>21 financial reporting, accounting, accounts payable. I am</p> <p>22 also responsible to oversee the managed care operations of</p> <p>23 the system. I also have strategy responsibilities and have</p> <p>24 been involved in mergers and acquisitions.</p> <p>25 Q. Do you have responsibilities for contracting with</p>	<p style="text-align: right;">1230</p> <p>1 employers?</p> <p>2 A. I do.</p> <p>3 Q. And in terms of managed care and employer</p> <p>4 contracting-related issues, how often do you get involved in</p> <p>5 those issues?</p> <p>6 A. I have staff that work, and I talk with staff</p> <p>7 probably on a daily basis about the issues we are working on</p> <p>8 in that arena.</p> <p>9 Q. What do you do to learn about employer and payor</p> <p>10 preferences in terms of the providers and their networks?</p> <p>11 A. One of my responsibilities is to develop the</p> <p>12 relationships with the payors. So I talk with the payors,</p> <p>13 the leadership, on a frequent basis. I have been talking to</p> <p>14 brokers, employers, as well as reading all the literature</p> <p>15 that's in the market now.</p> <p>16 Q. By the way, as we discussed, you are talking too</p> <p>17 fast.</p> <p>18 A. Okay.</p> <p>19 Q. Just to remind you.</p> <p>20 What's your educational background?</p> <p>21 A. I have a bachelor's of science from Indiana</p> <p>22 University in accounting and a master's in business</p> <p>23 administration from Westminster College.</p> <p>24 Q. And how long have you been active in the</p> <p>25 healthcare field?</p>
<p style="text-align: right;">1231</p> <p>1 A. Since I started in 1982.</p> <p>2 Q. And could you run down briefly the -- some of the</p> <p>3 positions you've had in the healthcare field since that</p> <p>4 time. I know there are many of them.</p> <p>5 A. Sure. I have worked on the provider side, on the</p> <p>6 hospital side. I have worked for several hospital systems,</p> <p>7 Holy Cross Health Services of Utah; a single hospital in</p> <p>8 Utah, Holy Cross Hospital. I have worked with Catholic</p> <p>9 Health Initiatives, which is a large national Catholic</p> <p>10 system based out of Denver.</p> <p>11 I have done consulting work where I worked for a</p> <p>12 variety of people in the healthcare industry. And then I</p> <p>13 have also worked on the payor side. I worked for Blue Cross</p> <p>14 and Blue Shield of Indiana and then Rocky Mountain</p> <p>15 Healthcare Services, which is Blue Cross plans of Colorado,</p> <p>16 New Mexico, and Nevada.</p> <p>17 Q. And have you had experience in putting together</p> <p>18 provider networks?</p> <p>19 A. I have put together networks in several markets.</p> <p>20 In Utah we created Intergroup of Utah, which was an HMO. It</p> <p>21 was a joint venture with the provider system and an HMO.</p> <p>22 When I worked for -- in Colorado, I was actually</p> <p>23 the VP of network services for Colorado, New Mexico, and</p> <p>24 Nevada.</p> <p>25 Q. And have you had experience in other cases in</p>	<p style="text-align: right;">1232</p> <p>1 evaluating provider networks?</p> <p>2 A. In part of my consulting arrangements, I evaluated</p> <p>3 networks for Cigna in Utah, for Aetna in Florida, for</p> <p>4 PeaceHealth in Oregon.</p> <p>5 Q. What is PeaceHealth?</p> <p>6 A. PeaceHealth is a Catholic system based in Oregon,</p> <p>7 and they had -- at that time, they had an HMO that they</p> <p>8 were -- that they owned.</p> <p>9 Q. Since you have been at Saint Alphonsus, about how</p> <p>10 many physician practice acquisitions has Saint Alphonsus</p> <p>11 made?</p> <p>12 A. Since I have been here, we have acquired 11</p> <p>13 physicians: the seven Saltzer physicians, one primary care,</p> <p>14 and three surgeons.</p> <p>15 Q. So 11 including the former Saltzer physicians?</p> <p>16 A. Yes. Yes.</p> <p>17 Q. Okay. Does Saint Alphonsus currently have a</p> <p>18 strategy of trying to grow through physician acquisitions or</p> <p>19 not?</p> <p>20 A. No.</p> <p>21 Q. I would like to -- if you could take a look at</p> <p>22 Exhibit 2171, which is in your book and shortly on the</p> <p>23 screen. I want to ask you about a page -- first of all, I</p> <p>24 want you to identify the document.</p> <p>25 A. This was a presentation that I made to our board</p>



<p style="text-align: right;">1233</p> <p>1 of directors. It was the annual system over -- strategy</p> <p>2 overview that we do every year to our board.</p> <p>3 MR. ETTINGER: Okay. Your Honor, there are</p> <p>4 probably AEO elements in the document, but I'm not going to</p> <p>5 show them, so I think we can just proceed.</p> <p>6 THE COURT: Thank you.</p> <p>7 BY MR. ETTINGER:</p> <p>8 Q. Can you turn to -- you can find it. I'm sure</p> <p>9 Ms. Duke could find it right away. There is a page called</p> <p>10 "Market Assessment: Physician Employment Increasing."</p> <p>11 A. Page 15.</p> <p>12 Q. Oh, it does have a page number. That's not it.</p> <p>13 A. Not it. That's page 13.</p> <p>14 Q. "Market Assessment: Physician Employment</p> <p>15 Increasing." That's it.</p> <p>16 Is this -- is this chart complete as of 2012?</p> <p>17 A. Yes, complete as of 2012.</p> <p>18 Q. Okay. I think Mr. Keeler was shown yesterday a</p> <p>19 version of this through 2011. As of 2012, how does the --</p> <p>20 does this chart depict the number of Saint Alphonsus</p> <p>21 physicians versus St. Luke's physicians?</p> <p>22 A. Ours did not increase much between 11 and 12, but</p> <p>23 they had a significant increase between years on the</p> <p>24 St. Luke's side.</p> <p>25 Q. Does this chart include the Saltzer physicians on</p>	<p style="text-align: right;">1234</p> <p>1 the St. Luke's side or not?</p> <p>2 A. It does not.</p> <p>3 Q. Was this document prepared in the ordinary course</p> <p>4 of business?</p> <p>5 A. It was.</p> <p>6 Q. Okay. That's all I've got on that.</p> <p>7 Let me ask you some general questions about provider</p> <p>8 networks. In your experience, what's the most important</p> <p>9 category of provider in a provider network?</p> <p>10 A. The primary care physician.</p> <p>11 Q. And why is that?</p> <p>12 A. Because they're the first contact with most</p> <p>13 patients with healthcare. They are the ones that usually</p> <p>14 manage the care for the patient, the traffic cop of</p> <p>15 healthcare.</p> <p>16 Q. Have you ever put together a network that did not</p> <p>17 include primary care physicians?</p> <p>18 A. I have not.</p> <p>19 Q. Have you ever seen a network --</p> <p>20 A. I have never --</p> <p>21 Q. Let me get the question out.</p> <p>22 A. Sorry.</p> <p>23 Q. Have you ever seen a network that did not include</p> <p>24 primary care physicians?</p> <p>25 A. I have not.</p>
<p style="text-align: right;">1235</p> <p>1 Q. Have you ever put together or seen a network</p> <p>2 without pediatricians in it?</p> <p>3 A. I have not.</p> <p>4 Q. And why did you never put together one without</p> <p>5 pediatricians?</p> <p>6 A. Because many families, many individuals, request</p> <p>7 pediatricians be part of the network to care for their</p> <p>8 children, especially newborn children but children of all</p> <p>9 ages. It's a desire of people as they evaluate a network or</p> <p>10 evaluate a product that they want to buy.</p> <p>11 Q. In your experience, what is the role of a primary</p> <p>12 care physician with regard to referrals of cases to</p> <p>13 specialists or to facilities?</p> <p>14 A. Generally, they are the first contact with the</p> <p>15 patient, and if their judgment -- if in their judgment they</p> <p>16 decide the patient needs to see a specialist, they are</p> <p>17 usually the one that refers them out to that specialist.</p> <p>18 Q. Let me ask you about the role of geographic</p> <p>19 coverage in networks. Is that an issue that you've</p> <p>20 addressed in forming or evaluating networks at some of the</p> <p>21 positions you've held?</p> <p>22 A. Definitely. We -- I have always evaluated: Do we</p> <p>23 have a proper geographic coverage across whatever market</p> <p>24 we're looking at? Do we have primary care physicians in all</p> <p>25 of the appropriate areas?</p>	<p style="text-align: right;">1236</p> <p>1 Q. And how do you decide whether you have got</p> <p>2 sufficient geographic coverage in a particular area?</p> <p>3 A. We have looked to see if we have a primary care</p> <p>4 physician within five to ten minutes of where the population</p> <p>5 lives.</p> <p>6 Q. Have you had circumstances where you had</p> <p>7 difficulty convincing primary care physicians in a</p> <p>8 particular local area to join a network?</p> <p>9 A. Yes, we did in Colorado.</p> <p>10 Q. And what did you do in response?</p> <p>11 A. We ended up paying those primary care physicians</p> <p>12 additional dollars to join our network.</p> <p>13 MR. ETTINGER: Your Honor, this is where I think</p> <p>14 we need to close the courtroom.</p> <p>15 THE COURT: Ladies and gentlemen, my apologies,</p> <p>16 but I think anyone other than Saint Alphonsus employees will</p> <p>17 have to leave the courtroom.</p> <p>18 ***** COURTROOM CLOSED TO THE PUBLIC *****</p> <p>19 THE COURT: Counsel, there apparently was a screen</p> <p>20 put on the window. Are we going to be using any exhibits on</p> <p>21 the screen? And I can close the --</p> <p>22 MR. DeLANGE: They are putting it up.</p> <p>23 THE COURT: Okay. Go ahead and proceed.</p> <p>24 MR. ETTINGER: Thank you, Your Honor.</p> <p>25 BY MR. ETTINGER:</p>

<p style="text-align: right;">1237</p> <p>1 <b>Q.</b> Mr. Petersen, what was the Advantage Care Network</p> <p>2 or ACN?</p> <p>3 <b>A.</b> It was a physician hospital organization that was</p> <p>4 owned by Saint Alphonsus.</p> <p>5 <b>Q.</b> And does it still exist in some form?</p> <p>6 <b>A.</b> In some form. We incorporated it into the Saint</p> <p>7 Alphonsus Health Alliance.</p> <p>8 <b>Q.</b> And about how many physicians are in the Saint</p> <p>9 Alphonsus Health Alliance?</p> <p>10 <b>A.</b> About 800.</p> <p>11 <b>Q.</b> And just briefly -- I think this has been in the</p> <p>12 record, but what is the Saint Alphonsus Health Alliance?</p> <p>13 <b>A.</b> The Saint Alphonsus Health Alliance is a form of a</p> <p>14 physician hospital organization, but it is a clinically</p> <p>15 integrated network.</p> <p>16 <b>Q.</b> About how many St. Luke's clinic physicians,</p> <p>17 meaning either employed by St. Luke's or in a professional</p> <p>18 services agreement with St. Luke's, are in the Alliance?</p> <p>19 <b>A.</b> About 90.</p> <p>20 <b>Q.</b> Have any St. Luke's clinic physicians been refused</p> <p>21 membership in the Alliance?</p> <p>22 <b>A.</b> We have not refused them.</p> <p>23 <b>Q.</b> Have any been kicked out of the Alliance because</p> <p>24 they work for St. Luke's?</p> <p>25 <b>A.</b> We have not.</p>	<p style="text-align: right;">1238</p> <p>1 <b>Q.</b> Was it an easy decision to keep all the St. Luke's</p> <p>2 physicians in the Alliance?</p> <p>3 <b>A.</b> It was not an easy decision, but we needed it to</p> <p>4 fill the geographic requirements of the network.</p> <p>5 <b>Q.</b> And why was it not an easy decision?</p> <p>6 <b>A.</b> Well, in many cases, some of those physicians</p> <p>7 would refer the patient to a St. Luke's hospital for care,</p> <p>8 which would often be out of network. So the patient would</p> <p>9 be disadvantaged financially by that decision.</p> <p>10 <b>Q.</b> So, given that problem, why do you still have</p> <p>11 these 90 doctors, St. Luke's doctors, in the Alliance?</p> <p>12 <b>A.</b> Because we still need them to have a full network.</p> <p>13 <b>Q.</b> Are there St. Luke's physicians who have left the</p> <p>14 Alliance based on their own actions?</p> <p>15 <b>A.</b> There has been many who have left.</p> <p>16 <b>Q.</b> Of the physicians that are part of the Alliance,</p> <p>17 about how many of them are employed by Saint Alphonsus?</p> <p>18 <b>A.</b> About 185.</p> <p>19 <b>Q.</b> Okay. So you said about 800, about 185 employed</p> <p>20 by Saint Alphonsus, about 90 in St. Luke's clinic. What</p> <p>21 about the rest?</p> <p>22 <b>A.</b> The rest are all independent physicians.</p> <p>23 <b>Q.</b> And what kinds of contracts does the Alliance</p> <p>24 seek?</p> <p>25 <b>A.</b> It seeks narrow network contracts.</p>
<p style="text-align: right;">1239</p> <p>1 <b>Q.</b> And what do you mean by that?</p> <p>2 <b>A.</b> That's where there is a defined network that is</p> <p>3 provided by that insurance product so the patients have a</p> <p>4 financial incentive to stay within that network.</p> <p>5 <b>Q.</b> Would you say the Alliance has been successful in</p> <p>6 terms of attracting business to date?</p> <p>7 <b>A.</b> To date, no, we have not.</p> <p>8 <b>Q.</b> Okay. Aside from Micron -- and we'll talk about</p> <p>9 Micron a little bit later -- who is the largest customer of</p> <p>10 the Alliance?</p> <p>11 <b>A.</b> Saint Alphonsus employees.</p> <p>12 <b>Q.</b> Other than Saint Alphonsus employees, what</p> <p>13 employers does the Alliance have a contract with?</p> <p>14 <b>A.</b> We have contracts with Woodgrain, Paul's</p> <p>15 supermarket, and we're about to conclude one with Thomas</p> <p>16 Cuisine.</p> <p>17 <b>Q.</b> Is the Woodgrain contract, is that with Alliance</p> <p>18 hospitals and physicians or not?</p> <p>19 <b>A.</b> It is -- currently it is a hospital contract.</p> <p>20 <b>Q.</b> And who has the physician contract with Woodgrain?</p> <p>21 <b>A.</b> ACN. Well, the Alliance has part of it, and they</p> <p>22 have a wrap with IPN for the larger network.</p> <p>23 <b>Q.</b> What do you mean by "a wrap"?</p> <p>24 <b>A.</b> It's the -- there is the defined network, and then</p> <p>25 if the patient decides to go out of the smaller network,</p>	<p style="text-align: right;">1240</p> <p>1 they can go to the IPN network.</p> <p>2 <b>Q.</b> And when did the agreement with Paul's Market</p> <p>3 start?</p> <p>4 <b>A.</b> I believe it was in April of this year.</p> <p>5 <b>Q.</b> Does that agreement include hospital and</p> <p>6 physicians or not?</p> <p>7 <b>A.</b> That is just a hospital agreement.</p> <p>8 <b>Q.</b> Okay. And how significant has that contract been</p> <p>9 so far?</p> <p>10 <b>A.</b> It has been rather insignificant. We have had one</p> <p>11 hospitalization since April.</p> <p>12 <b>Q.</b> And Thomas Cuisine Management, about how many</p> <p>13 members do they have?</p> <p>14 <b>A.</b> They have about 80 employees.</p> <p>15 <b>Q.</b> And do they have any particular relationship with</p> <p>16 Saint Alphonsus?</p> <p>17 <b>A.</b> They have the contract to provide our dietary</p> <p>18 services in our four hospitals.</p> <p>19 <b>Q.</b> Does the Alliance have a contract with an entity</p> <p>20 called Corizon?</p> <p>21 <b>A.</b> We do.</p> <p>22 <b>Q.</b> And what is Corizon?</p> <p>23 <b>A.</b> Corizon has the contract with the State of Idaho</p> <p>24 to provide medical services to inmates and prisoners.</p> <p>25 <b>Q.</b> And is the Corizon contract a narrow network or</p>



<p style="text-align: right;">1241</p> <p>1 any kind of a preferred network?</p> <p>2 <b>A. It is not.</b></p> <p>3 <b>Q.</b> Are there any payors with whom the Alliance has</p> <p>4 contracts?</p> <p>5 <b>A. The Alliance has contracts with Blue Cross of</b></p> <p>6 <b>Idaho, PacificSource, Humana, Altius, and -- no, those are</b></p> <p>7 <b>the four -- the five.</b></p> <p>8 <b>Q.</b> How about MultiPlan?</p> <p>9 <b>A. Oh, MultiPlan. I forgot one. And First Choice.</b></p> <p>10 <b>I forgot both of them.</b></p> <p>11 <b>Q.</b> Okay. So between Altius, MultiPlan, and First</p> <p>12 Choice, about how many covered lives are involved in those</p> <p>13 contracts?</p> <p>14 <b>A. Approximately 15,000.</b></p> <p>15 <b>Q.</b> And did you have to compete against St. Luke's or</p> <p>16 a St. Luke's-based network for those contracts?</p> <p>17 <b>A. We did not.</b></p> <p>18 <b>Q.</b> And what kinds of contracts does the Alliance have</p> <p>19 with Humana?</p> <p>20 <b>A. Humana is just a Medicare Advantage contract.</b></p> <p>21 <b>Q.</b> How about PacificSource?</p> <p>22 <b>A. PacificSource, we have a general contract for the</b></p> <p>23 <b>community, but our most recent products are products for the</b></p> <p>24 <b>health exchange.</b></p> <p>25 <b>Q.</b> And about how many lives do you have in the</p>	<p style="text-align: right;">1242</p> <p>1 PacificSource contracts?</p> <p>2 <b>A. None at this point.</b></p> <p>3 <b>Q.</b> Okay. The product with the health exchange, is</p> <p>4 that a narrow-network product?</p> <p>5 <b>A. It is a narrow-network product.</b></p> <p>6 <b>Q.</b> Is that the only product that PacificSource is</p> <p>7 offering through the health exchange?</p> <p>8 <b>A. No. They have products with other health systems</b></p> <p>9 <b>like St. Luke's.</b></p> <p>10 <b>Q.</b> And what is the health exchange?</p> <p>11 <b>A. The health exchange is part of the Affordable Care</b></p> <p>12 <b>Act. It's the marketplace where people will be able to go</b></p> <p>13 <b>and buy health insurance, individuals, that will be</b></p> <p>14 <b>available beginning January. And you can start enrolling</b></p> <p>15 <b>today, I guess.</b></p> <p>16 <b>Q.</b> And does the -- what does the -- what is the</p> <p>17 product that the Alliance provides with Blue Cross?</p> <p>18 <b>A. It is ConnectedCare.</b></p> <p>19 <b>Q.</b> And about how many lives to date have been -- have</p> <p>20 been signed up by ConnectedCare?</p> <p>21 <b>A. 250.</b></p> <p>22 <b>Q.</b> Were the St. Luke's doctors in the Alliance</p> <p>23 invited in the ConnectedCare contract originally?</p> <p>24 <b>A. In the original contract, no, we did not.</b></p> <p>25 <b>Q.</b> So how did that work out for you?</p>
<p style="text-align: right;">1243</p> <p>1 <b>A. Well, we only have 250,000 lives. It's not been</b></p> <p>2 <b>very successful.</b></p> <p>3 <b>Q.</b> Did you say 250,000?</p> <p>4 <b>A. 250. Sorry.</b></p> <p>5 <b>Q.</b> Slight difference. Wishful thinking, I guess.</p> <p>6 <b>A. A little difference.</b></p> <p>7 <b>Q.</b> And under the current ConnectedCare product, were</p> <p>8 the St. Luke's doctors invited?</p> <p>9 <b>A. Yes, we did invite them.</b></p> <p>10 <b>Q.</b> Okay. Did they participate?</p> <p>11 <b>A. They have not decided -- they have rejected the</b></p> <p>12 <b>invitation.</b></p> <p>13 <b>Q.</b> Okay. Why would -- why, in your view, has the</p> <p>14 Alliance not been more successful to date in establishing</p> <p>15 contracting and gaining covered lives?</p> <p>16 <b>A. The Idaho market has been a market that wants wide</b></p> <p>17 <b>choice.</b></p> <p>18 MR. STEIN: Your Honor, I just want to voice the</p> <p>19 same objection as yesterday. If Mr. Genna [sic] wants to</p> <p>20 talk about his understanding, that's fine, as long as we</p> <p>21 understand that it's not being offered for the truth as to</p> <p>22 what other people want. I'm sorry. Mr. Petersen.</p> <p>23 THE COURT: Mr. Ettinger?</p> <p>24 MR. ETTINGER: Your Honor, this is not a matter of</p> <p>25 "Mr. X told me something." This is a matter of a person</p>	<p style="text-align: right;">1244</p> <p>1 with wide experience in this field who has got significant</p> <p>2 responsibilities for this business and has made judgments</p> <p>3 about the marketplace.</p> <p>4 THE COURT: Well, I think, consistent with my</p> <p>5 prior ruling yesterday, the witness can testify generally</p> <p>6 about his experience. But to the extent that he is</p> <p>7 testifying about what others have told him, then that would</p> <p>8 be a problem.</p> <p>9 Now, obviously, his experience is going to be based</p> <p>10 largely upon the things he observed, the things he</p> <p>11 participated in, which may include hearsay statements. But</p> <p>12 as long as the witness is simply testifying about his</p> <p>13 experience, I'll permit it.</p> <p>14 Go ahead and proceed, Mr. Ettinger.</p> <p>15 BY MR. ETTINGER:</p> <p>16 <b>Q.</b> So when you say the -- who is it you said who</p> <p>17 wants wide choice?</p> <p>18 <b>A. This -- the Idaho market has -- the products that</b></p> <p>19 <b>have been sold to insurers have generally been products that</b></p> <p>20 <b>included a wide number of providers, generally almost</b></p> <p>21 <b>everyone in the -- every provider in the market. Those are</b></p> <p>22 <b>the products that have actually sold to date.</b></p> <p>23 <b>Q.</b> Okay. And so when you say the market wants wide</p> <p>24 choice, are you talking about -- are you referring to people</p> <p>25 telling you that, or are you referring to the experience you</p>

<p style="text-align: right;">1245</p> <p>1 have observed in terms of which products are successful and</p> <p>2 which unsuccessful?</p> <p>3 <b>A.</b> Which products are successful and which are</p> <p>4 unsuccessful.</p> <p>5 <b>Q.</b> Okay. Mr. Petersen, what is a risk contract?</p> <p>6 <b>A.</b> A risk contract is when the provider shares in the</p> <p>7 insurance risk of a contract with a -- with an employer.</p> <p>8 <b>Q.</b> Okay. Does the Alliance have -- has the Alliance</p> <p>9 entered into risk contracts?</p> <p>10 <b>A.</b> We have some risk contracts. We have some</p> <p>11 contracts -- for example, the Blue Cross ConnectedCare</p> <p>12 contract -- that will move into risk when we achieve a</p> <p>13 certain number of lives.</p> <p>14 <b>Q.</b> And which -- besides the ConnectedCare product,</p> <p>15 what other contracts are there that are risk contracts?</p> <p>16 <b>A.</b> The PacificSource contract has a risk withhold to</p> <p>17 it. The Humana contract has a risk withhold. And the Blue</p> <p>18 Cross of Idaho Medicare Advantage TrueBlue ConnectedCare</p> <p>19 product has a withhold.</p> <p>20 <b>Q.</b> And what is a risk withhold?</p> <p>21 <b>A.</b> A withhold is when the payor will hold back a</p> <p>22 small percentage of the payment to the provider and at the</p> <p>23 end of the year will evaluate whether that product has been</p> <p>24 profitable or unprofitable based on comparing claims cost to</p> <p>25 the premium received. And if there is money there</p>	<p style="text-align: right;">1246</p> <p>1 available, the withhold will be returned to the provider.</p> <p>2 <b>Q.</b> And what is the potential benefit from risk</p> <p>3 contracting?</p> <p>4 <b>A.</b> Well, it incentivizes us, as providers, to meet</p> <p>5 all the quality utilization and cost goals that we have as a</p> <p>6 health plan, and it also provides potential for additional</p> <p>7 financial reimbursement if we're successful at those.</p> <p>8 <b>Q.</b> Is risk contracting something new in healthcare?</p> <p>9 <b>A.</b> No. It's been in healthcare since the '70s.</p> <p>10 <b>Q.</b> What is gain sharing?</p> <p>11 <b>A.</b> Gain sharing is a contract where the provider only</p> <p>12 participates in upside. In other words, we have no downside</p> <p>13 risk. We wouldn't have to pay back money if total</p> <p>14 healthcare claims were above targets. But if we can manage</p> <p>15 the care, manage the quality and the care and the</p> <p>16 utilization, we have an opportunity to share in the</p> <p>17 insurance -- the actuarial gain on the insurance product.</p> <p>18 <b>Q.</b> And does the Alliance have any gain-sharing</p> <p>19 contracts?</p> <p>20 <b>A.</b> We do. There is components of the PacificSource</p> <p>21 contract, the Humana contract. We have had a TrueBlue</p> <p>22 gain-sharing contract with Blue Cross for almost ten years.</p> <p>23 <b>Q.</b> Are there any other risk-based contracts that you</p> <p>24 are now in discussion about that you haven't yet entered</p> <p>25 into?</p>
<p style="text-align: right;">1247</p> <p>1 <b>A.</b> We have talked to -- we're having discussions with</p> <p>2 Regence Blue Shield.</p> <p>3 <b>Q.</b> Okay. Why don't you take a look at the other</p> <p>4 document in your folder, Exhibit 2541.</p> <p>5 THE COURT: What's the exhibit?</p> <p>6 MR. ETTINGER: 2541.</p> <p>7 BY MR. ETTINGER:</p> <p>8 <b>Q.</b> What is Exhibit 2541, Mr. Petersen?</p> <p>9 MR. STEIN: Excuse me. Could I ask for a copy of</p> <p>10 that document? Have you got an extra?</p> <p>11 MR. ETTINGER: Sure.</p> <p>12 MR. STEIN: Especially if you can't see it on the</p> <p>13 screen. That's why I asked.</p> <p>14 MR. ETTINGER: Hopefully it will be on the screen</p> <p>15 shortly.</p> <p>16 Your Honor, we apparently -- for some reason, it's not</p> <p>17 in the computer database. Did we find another one for the</p> <p>18 court? Good.</p> <p>19 THE COURT: That's fine. Let's just go ahead and</p> <p>20 proceed. I don't want to hold things up. We're about due</p> <p>21 for the second break here in the next few minutes, so I'll</p> <p>22 leave it up to counsel.</p> <p>23 Do you have a copy?</p> <p>24 THE WITNESS: I do.</p> <p>25 THE COURT: All right. Let's go ahead and</p>	<p style="text-align: right;">1248</p> <p>1 proceed.</p> <p>2 BY MR. ETTINGER:</p> <p>3 <b>Q.</b> So what is Exhibit 2541, Mr. Petersen?</p> <p>4 <b>A.</b> This was a document we prepared to describe our</p> <p>5 payor partnership and our gross strategy in the managed care</p> <p>6 area.</p> <p>7 <b>Q.</b> And could you turn to page 8 of the document.</p> <p>8 Page 8, you see, refers to value-based reimbursement. Can</p> <p>9 you explain what that is?</p> <p>10 <b>A.</b> Well, healthcare is moving to more of a value</p> <p>11 rather than just a volume-based philosophy. And this</p> <p>12 describes that we believe that the patient or the member,</p> <p>13 however you describe that person, should benefit from what</p> <p>14 we're doing. We should provide higher quality, lower cost,</p> <p>15 and we should manage their chronic diseases in a way that we</p> <p>16 reduce the overall cost of healthcare.</p> <p>17 And that's a component of how we want to do</p> <p>18 everything in the future and that we will make sure that</p> <p>19 when we sign a contract with a payor, we'll have wellness,</p> <p>20 we'll have other positive things in the contract. It's not</p> <p>21 just a financial arrangement anymore.</p> <p>22 <b>Q.</b> And let me ask you about -- for the independent</p> <p>23 physicians in the Alliance, how will the financial</p> <p>24 incentives work, generally?</p> <p>25 <b>A.</b> Well, we have a formula how we divide money. If</p>

<p>1249</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10 REDACTED</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22 MR. STEIN: Objection. Leading.</p> <p>23 MR. ETTINGER: Your Honor --</p> <p>24 THE COURT: Overruled. It's an either/or. It's</p> <p>25 very hard to ask a question either/or without being leading,</p>	<p>1250</p> <p>1 I suppose.</p> <p>2 Proceed. The objection is overruled. Mr. Ettinger,</p> <p>3 you --</p> <p>4 MR. ETTINGER: I'm not going to say another word,</p> <p>5 Your Honor.</p> <p>6 Just asking the witness whether he has the question in</p> <p>7 mind or not.</p> <p>8 THE WITNESS: I do. And the route is direct to</p> <p>9 the independent physicians, so that would be the much more</p> <p>10 visible and direct response. They would -- they would</p> <p>11 recognize it more easily as an independent physician.</p> <p>12 BY MR. ETTINGER:</p> <p>13 Q. What is meaningful use, Mr. Petersen?</p> <p>14 A. Meaningful use was a program the federal</p> <p>15 government implemented to incentivize hospitals and other</p> <p>16 providers to implement healthcare information technology,</p> <p>17 most specifically electronic health records and other</p> <p>18 related IT implementations.</p> <p>19 Q. And which was the first hospital -- I'm sorry.</p> <p>20 Let me ask you one other question.</p> <p>21 So are there payments made by the federal government</p> <p>22 under meaningful use?</p> <p>23 A. Yes. There are payments made if you meet the</p> <p>24 requirements.</p> <p>25 Q. Which was the first hospital in the Treasure</p>
<p>1251</p> <p>1 Valley to obtain meaningful use payments?</p> <p>2 A. It was Saint Alphonsus Regional Medical Center.</p> <p>3 MR. ETTINGER: Your Honor, if we're about to take</p> <p>4 a break, this is probably a pretty good time.</p> <p>5 THE COURT: Great. We'll take a 15-minute break,</p> <p>6 reconvene in 15 minutes. We'll be in recess.</p> <p>7 (Recess.)</p> <p>8 ***** COURTROOM REMAINS CLOSED TO THE PUBLIC *****</p> <p>9 THE COURT: For the record, I'll remind the</p> <p>10 witness you are still under oath.</p> <p>11 And with that, Mr. Ettinger, you may resume your direct</p> <p>12 examination.</p> <p>13 MR. ETTINGER: Thank you, Your Honor.</p> <p>14 BY MR. ETTINGER:</p> <p>15 Q. Mr. Petersen, have you had any role on behalf of</p> <p>16 Saint Alphonsus in dealing with Micron?</p> <p>17 A. Yes. I am one of the executives, the primary</p> <p>18 executive, that deals with Micron -- the Micron</p> <p>19 relationship.</p> <p>20 Q. And for how long have you had that role about?</p> <p>21 A. Since I have been here.</p> <p>22 Q. How would you compare Micron with other employers</p> <p>23 you have dealt with in your healthcare career in terms of</p> <p>24 how they go about dealing with healthcare issues?</p> <p>25 A. Micron is a unique employer. First, there are</p>	<p>1252</p> <p>1 very few employers in the country that have their own</p> <p>2 network, the Micron high performance network which they</p> <p>3 formed in a joint venture with Imagine Health. They are</p> <p>4 also the first employer I have ever dealt with where the</p> <p>5 supply chain operation actually makes the healthcare</p> <p>6 decisions. Just like they make decisions to buy silicone</p> <p>7 and silver and gold, healthcare is actually negotiated and</p> <p>8 purchased in the same method.</p> <p>9 So it's unique. They are very -- very price</p> <p>10 conscious, very sensitive organization, and they are willing</p> <p>11 to do things with their health plan consistent with the</p> <p>12 supply chain mandates for reducing cost.</p> <p>13 THE COURT: Would you explain the term "supply</p> <p>14 chain." What do you mean?</p> <p>15 THE WITNESS: I'm sorry. The people that do the</p> <p>16 purchasing, the buying. They're the people that negotiate</p> <p>17 with all the vendors that Micron has.</p> <p>18 THE COURT: Okay. I don't have a degree in</p> <p>19 business, and I suspect that might be more of a business</p> <p>20 background term.</p> <p>21 THE WITNESS: Yes.</p> <p>22 THE COURT: All right. Thank you.</p> <p>23 BY MR. ETTINGER:</p> <p>24 Q. So you mentioned the supply chain approach, and</p> <p>25 then you just mentioned people. So were the Micron people</p>

1253

1 involved -- are the Micron people involved in dealing with  
2 these healthcare issues entirely human resources people or  
3 people from the purchasing department or some combination  
4 thereof? Can you explain that?

5 **A. In my experience, usually it's been human**  
6 **resources that has dealt -- have dealt with the insurance**  
7 **issues. But Micron, they are never just HR. There is HR**  
8 **and the supply chain purchasing people in the room at all**  
9 **times.**

10 THE COURT: Could I just -- I want to inquire,  
11 again, getting back to this concept. Micron was not the  
12 first that you had ever heard of doing this, was it? I  
13 mean, my sense was, from things I have read, that very large  
14 national employers like General Electric and others have  
15 started doing more of that kind of back-end --

16 THE WITNESS: There are more that do that.  
17 Certainly Micron is the first and only one that has done it  
18 in Idaho. There are some around the country that do that.

19 THE COURT: And all of those models would be  
20 risk-based-type contracts?

21 THE WITNESS: Most of them are self-funded  
22 insurers. In other words, they don't have an insurance  
23 company. They are self-funding their health plan.

24 THE COURT: They don't have to be risk based; they  
25 could be fee-for-service --

1254

1 THE WITNESS: They could be.

2 THE COURT: -- but they would be very aggressive  
3 in controlling the costs and negotiating contracts?

4 THE WITNESS: Right. For example, with Micron, we  
5 do have a risk component to our contract. We are paid for  
6 quality incentives.

7 THE COURT: I'm sorry, Mr. Ettinger. Go ahead.

8 BY MR. ETTINGER:

9 **Q.** Sure. Would you say that Saint Alphonsus's  
10 position in the Micron network is secure or not?

11 **A. It is not. We started the contract with a**  
12 **multiyear contract, but now it's an annual contract. We**  
13 **have to renew it every year.**

14 **Q.** Have you heard complaints or concerns from Micron  
15 in the last year or two?

16 MR. STEIN: Objection. Hearsay.

17 MR. ETTINGER: Your Honor, this is not offered to  
18 prove the truth. I think the fact that Micron evinced  
19 complaints is, itself, highly probative. We're talking  
20 about --

21 THE COURT: Overruled. Overruled. You may  
22 answer.

23 THE WITNESS: Yes. We consistently have  
24 discussions with Micron, and they are having concerns about  
25 the network, gaps in the network, how are we going to

1255

1 fill -- how are we going to replace physicians that are  
2 recruited by St. Luke's. So we have pretty consistent  
3 conversations over my entire time with Micron on these  
4 topics.

5 BY MR. ETTINGER:

6 **Q.** Okay. Do you recall any of the specific areas  
7 where they mentioned gaps to you?

8 **A. We have had gaps in orthopedic surgery as surgeons**  
9 **have left to go to St. Luke's. We have a continuing problem**  
10 **with pediatric subspecialists, and general surgery has been**  
11 **another area of concern.**

12 **Q.** Have you had any recent requests from Micron or  
13 from Imagine regarding any bids that they want from you, any  
14 different kinds of bids that they want from you?

15 **A. In the last 60 days, I have had discussions with**  
16 **Imagine Health related to other options and what our price**  
17 **may be if some different options are chosen by Micron.**

18 **Q.** And what options were mentioned?

19 **A. Really simply, one was a status quo option. One**  
20 **was to offer St. Luke's and Saint Al's side by side to their**  
21 **employees; the employees would make the choice. The third**  
22 **one was to offer Saint Al's and St. Luke's, but St. Luke's**  
23 **would be at a higher price. And the last option was to go**  
24 **back to the way they were and just have everyone in the**  
25 **network.**

1256

1 **Q.** And what was -- and currently you're in the high  
2 performance network; is that right?

3 **A. Currently we are in the high performance network.**

4 **Q.** So how did -- did you offer any prices to Imagine,  
5 how it would change if some of these other options were  
6 adopted?

7 **A. We did say if we lost exclusivity, we would have**  
8 **to increase our price to Micron.**

9 **Q.** What's the logic of that?

10 **A. Well, right now we are -- because we have an**  
11 **exclusive contract, we know we will receive volume from**  
12 **Micron. We can account for that in our cost structure. But**  
13 **if we lose a large percentage of that, we will have costs we**  
14 **will have to eliminate. So we will either -- we will have**  
15 **to raise the price to them to be whole in the project.**

16 **Q.** How important is the Micron relationship to  
17 Saint Al's today?

18 **A. Micron -- the Micron business, itself, comprises**  
19 **about 20 percent of our bottom line. So it's a very**  
20 **important client to us.**

21 THE COURT: When you say "bottom line," I think of  
22 profit. Is that --

23 THE WITNESS: Yes, that's our profit.

24 THE COURT: -- 20 percent of your profit?

25 THE WITNESS: Correct.

1257

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1 BY MR. ETTINGER:

2 **Q.** Let me ask you about Saltzer now. Is Saltzer --  
3 are Saltzer doctors currently in the Alliance?

4 **A.** Yes, they are.

5 **Q.** Do you have any concerns about -- about if the  
6 acquisition of Saltzer by St. Luke's goes forward and is not  
7 unwound, how that would affect Saint Alphonsus's and the  
8 Alliance's ability to compete?

9 **A.** We have significant concerns. If Saltzer is not  
10 part of the network, we have a major hole in the Nampa  
11 service area.

12 **Q.** And why is that a concern?

13 **A.** Well, because we -- you know, they will not be an  
14 attractive primary care network in the Nampa area without  
15 Saltzer. They are the most respected group, and they have a  
16 large number -- they are the largest number of primary care  
17 physicians in Nampa.

18 **Q.** And what is the TrueBlue network?

19 **A.** TrueBlue is a Blue Cross Medicare Advantage  
20 product.

21 **Q.** Who are the providers in that TrueBlue network?

22 **A.** Well, one of the networks that's probably the most  
23 germane to this discussion, there is a TrueBlue network that  
24 has the Saint Alphonsus Nampa hospital, the Saltzer  
25 physicians, and the Terry Reilly physicians in that small

1 network.

2 **Q.** And what would happen to that network if Saltzer  
3 was pulled out of it?

4 **A.** That network would probably dissolve. I don't see  
5 how it could sustain itself without Saltzer's involvement.

6 **Q.** And what would be the consequences for the  
7 Alliance if Saltzer were pulled out of it?

8 **A.** We are very concerned that we would not be  
9 competitive as we try to sell products in the Nampa area and  
10 even the greater service area because many employees may  
11 work in other areas but live in Nampa. So it is a  
12 significant -- a very crucial part of the market area for  
13 us.

14 MR. ETTINGER: Your Honor, I believe 2541 has  
15 already been admitted, and I would move the admission of  
16 2171.

17 THE COURT: 2171? 2541 has been admitted. And  
18 the other is 2171?

19 MR. ETTINGER: Yes, Your Honor.

20 THE COURT: Is there any objection?

21 MR. STEIN: Well, since they're our exhibits, I  
22 would probably look foolish if I objected to it.

23 THE COURT: Good point. I assume you're  
24 withdrawing your foundation and 802 objection?

25 MR. ETTINGER: I thought it was going the other

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1 way, Your Honor, but I'm more than happy to get it admitted.

2 THE COURT: The exhibit will be admitted.

3 (Defendants' Exhibit No. 2171 admitted.)

4 MR. ETTINGER: Thank you. No further questions,  
5 Your Honor.

6 THE COURT: Cross, Mr. Stein.

7 CROSS-EXAMINATION

8 BY MR. STEIN:

9 **Q.** Mr. Petersen, are the Saint Alphonsus-employed  
10 primary care doctors in Nampa so poorly viewed by the  
11 community that you just couldn't field the competitive  
12 network if you asked people to just visit Saint  
13 Alphonsus-employed physicians?

14 **A.** No, I don't agree with that.

15 **Q.** And a Saltzer -- an ACN network without Saltzer  
16 would be less attractive to employers than a St. Luke's  
17 network with Saltzer; right?

18 **A.** Repeat it just to make sure I understood all the  
19 nots and --

20 **Q.** Sure. A Saint Alphonsus network without Saltzer  
21 would be less attractive to employers than a St. Luke's  
22 network with Saltzer; right?

23 **A.** If Saltzer was exclusive to only the St. Luke's  
24 network, yes.

25 **Q.** Right.

1 **A.** The Saint Al's network would be less attractive.

2 **Q.** And that's how networks compete; right? They  
3 compete to make their networks look more attractive than  
4 competing networks; right?

5 **A.** Yes.

6 **Q.** Did I understand your testimony that Saint  
7 Alphonsus has employed only 11 doctors since you have been  
8 here?

9 **A.** The question was acquired 11 doctors --

10 **Q.** Acquired.

11 **A.** -- since I have been here. There has been others  
12 that have been recruited.

13 **Q.** How many others has Saint Al's tried to acquire?

14 **A.** I'm not aware of any.

15 **Q.** Really? What about Saltzer?

16 **A.** Yes, you're right. Saltzer.

17 **Q.** Boise Surgical Group?

18 **A.** We did.

19 **Q.** Any others?

20 **A.** Not that I'm aware of.

21 **Q.** With regard to ConnectedCare, did I understand  
22 correctly that when that product was launched, Saint  
23 Alphonsus made a decision not to invite St. Luke's providers  
24 to participate?

25 **A.** Yes.



<p style="text-align: right;">1261</p> <p>1 <b>Q.</b> And when -- when was that decision made?</p> <p>2 <b>A.</b> Oh, that would have been almost 18 months ago.</p> <p>3 <b>Q.</b> And then, later, a decision was made to extend an</p> <p>4 invitation to St. Luke's to join ConnectedCare; right?</p> <p>5 <b>A.</b> Yes.</p> <p>6 <b>Q.</b> Mr. Ettinger elicited that from you in direct. Do</p> <p>7 you recall that?</p> <p>8 <b>A.</b> Yes.</p> <p>9 <b>Q.</b> When was that invitation extended?</p> <p>10 <b>A.</b> We sent out the messenger model for ConnectedCare</p> <p>11 in the last month, month and a half.</p> <p>12 <b>Q.</b> Just before this trial?</p> <p>13 <b>A.</b> Yes. I mean, the timing was to get ready for the</p> <p>14 health exchange. So it's been in the last 45 days.</p> <p>15 <b>Q.</b> Now, you testified about risk withholds. If I</p> <p>16 understand correctly, a risk withhold has a limited portion</p> <p>17 of the amount of revenue that you received that's at risk;</p> <p>18 is that right?</p> <p>19 <b>A.</b> That's correct.</p> <p>20 <b>Q.</b> It's not a full risk arrangement?</p> <p>21 <b>A.</b> No.</p> <p>22 <b>Q.</b> And with whom does Saint Al's have risk withhold</p> <p>23 arrangements?</p> <p>24 <b>A.</b> PacificSource, the Blue Cross ConnectedCare</p> <p>25 TrueBlue product -- that's their Medicare Advantage</p>	<p style="text-align: right;">1262</p> <p>1 <b>product -- and the small one with Humana.</b></p> <p>2 <b>Q.</b> When did that PacificSource product become</p> <p>3 available?</p> <p>4 <b>A.</b> Well, it will become available January 1st on the</p> <p>5 health exchange.</p> <p>6 <b>Q.</b> And you talked -- I believe you said that there</p> <p>7 are a number of contracts that Saint Al's is exploring with</p> <p>8 payors like Regence and others that would have more</p> <p>9 risk-based components; is that right?</p> <p>10 <b>A.</b> Well, Regence is the only one we're exploring now.</p> <p>11 <b>Q.</b> And isn't it true that payors are getting anxious</p> <p>12 to come up with new products in order to competitively</p> <p>13 respond to the St. Luke's relationship with SelectHealth?</p> <p>14 <b>A.</b> Payors are coming up -- have been coming up with</p> <p>15 new products for the health exchange this year.</p> <p>16 <b>Q.</b> Could we put up trial Exhibit 2165. George, can</p> <p>17 we just call out the top half of this. There is an email</p> <p>18 from Mr. Petersen dated November 12 of 2012.</p> <p>19 Mr. Petersen, do you recognize this as an email that</p> <p>20 you sent about a week after Saint Al's filed this</p> <p>21 litigation?</p> <p>22 <b>A.</b> Yes.</p> <p>23 <b>Q.</b> And you were writing to other Saint Alphonsus</p> <p>24 executives; is that right?</p> <p>25 <b>A.</b> Yes.</p>
<p style="text-align: right;">1263</p> <p>1 <b>Q.</b> And one of the executives you were writing to was</p> <p>2 Sally Jeffcoat, the CEO of Saint Al's?</p> <p>3 <b>A.</b> Yes. I see her name there.</p> <p>4 <b>Q.</b> Right. Can you read the first sentence of the</p> <p>5 second paragraph for the record.</p> <p>6 <b>A.</b> "The payors are getting anxious to come up with</p> <p>7 new products given the SelectHealth entrance into the</p> <p>8 market."</p> <p>9 <b>Q.</b> And payors that you were referring to there</p> <p>10 included PacificSource and Regence and Blue Cross; right?</p> <p>11 <b>A.</b> Yes.</p> <p>12 <b>Q.</b> But the basis for your statement there was</p> <p>13 discussions that you had with those payors; is that correct?</p> <p>14 <b>A.</b> Yes, that's correct.</p> <p>15 <b>Q.</b> And the St. Luke's-SelectHealth relationship has</p> <p>16 also prompted Saint Al's to accelerate the development of</p> <p>17 the Health Alliance; is that right?</p> <p>18 <b>A.</b> No. We were developing the Health Alliance before</p> <p>19 we even heard about SelectHealth.</p> <p>20 <b>Q.</b> George, can we put up Exhibit 2166. Just call out</p> <p>21 the email from Mr. Petersen, please.</p> <p>22 Exhibit 2166, Mr. Petersen, is an email from you to</p> <p>23 J. Robert Polk dated August 31, 2012. Who is Dr. Polk?</p> <p>24 <b>A.</b> Dr. Polk is the chief quality officer for Saint</p> <p>25 Alphonsus Health System.</p>	<p style="text-align: right;">1264</p> <p>1 <b>Q.</b> You wrote, quote, "With the information we</p> <p>2 received yesterday about Intermountain Health Plan and</p> <p>3 St. Luke's, the pace of change just accelerated."</p> <p>4 And the Intermountain Health Plan that is being</p> <p>5 referenced there is St. Luke's; is that right?</p> <p>6 <b>A.</b> Yeah, I believe so, yes.</p> <p>7 <b>Q.</b> I'm sorry. SelectHealth?</p> <p>8 <b>A.</b> SelectHealth, yes.</p> <p>9 <b>Q.</b> Thank you. You told Dr. Polk, "We are going to</p> <p>10 have to do quite a bit of work that we are not fully ready</p> <p>11 for. If we wait until we are ready, the bus will have left</p> <p>12 the station and we will be so far behind we may never catch</p> <p>13 up. From all I hear St. Luke's is also not ready, but ready</p> <p>14 or not, here we come."</p> <p>15 That's what you told Dr. Polk?</p> <p>16 <b>A.</b> Yes. That's what it says.</p> <p>17 <b>Q.</b> Now, narrow-network products are fairly new in</p> <p>18 this market; right?</p> <p>19 <b>A.</b> Yes. They are new in this market.</p> <p>20 <b>Q.</b> And you expect that it will take some time for</p> <p>21 narrow-network to ramp up; correct?</p> <p>22 <b>A.</b> Yes.</p> <p>23 <b>Q.</b> And Saint Alphonsus believes that narrow networks</p> <p>24 are inextricably linked to healthcare reform; right?</p> <p>25 <b>A.</b> Narrow networks are linked to where we have to go</p>



<p style="text-align: right;">1265</p> <p>1 to reduce healthcare costs. Whether it's health reform or</p> <p>2 the desires of employers, that could be the same thing.</p> <p>3 <b>Q.</b> Let's put up Trial Exhibit 2230.</p> <p>4 Mr. Petersen, this is an email from David Ettinger,</p> <p>5 Counsel for Saint Alphonsus, to Stuart Hirschfield of the</p> <p>6 Federal Trade Commission dated July 6 of 2012. Let's call</p> <p>7 out the last paragraph on this page.</p> <p>8 Mr. Ettinger writes, quote, "We" -- writing on behalf</p> <p>9 of Saint Alphonsus -- "believe that healthcare reform and</p> <p>10 clinical advancement are inextricably linked to narrow</p> <p>11 networks."</p> <p>12 Do you agree with that statement?</p> <p>13 <b>A.</b> I think it's generally correct.</p> <p>14 <b>Q.</b> And the paragraph from Mr. Ettinger continues,</p> <p>15 "More effective clinical integration going forward will</p> <p>16 involve close management of patients by primary care</p> <p>17 physicians utilizing an integrated specialty network. This</p> <p>18 requires that those patients' lives be exclusive or</p> <p>19 virtually exclusive to the particular network. If such</p> <p>20 patients are free to obtain care on a daily basis from any</p> <p>21 physicians they desire in an open network, there will be no</p> <p>22 one with the power to manage their care."</p> <p>23 Do you agree with that?</p> <p>24 <b>A.</b> Yes.</p> <p>25 THE COURT: Counsel, before we leave that, is</p>	<p style="text-align: right;">1266</p> <p>1 there an objection to 2230? There is a number of objections</p> <p>2 noted. Since we have put it into the record, I think we</p> <p>3 need to rule whether the exhibit is going to be admitted or</p> <p>4 not.</p> <p>5 Mr. Ettinger.</p> <p>6 MR. ETTINGER: Your Honor, we did object on a</p> <p>7 number of grounds. Actually, can I have a moment,</p> <p>8 Your Honor?</p> <p>9 THE COURT: Yes.</p> <p>10 MR. ETTINGER: Your Honor, we'll withdraw the</p> <p>11 objection.</p> <p>12 THE COURT: All right. 2230 will be admitted.</p> <p>13 (Defendants' Exhibit No. 2230 admitted.)</p> <p>14 THE COURT: Go ahead, Mr. Stein.</p> <p>15 BY MR. STEIN:</p> <p>16 <b>Q.</b> Are you on the board of directors of the</p> <p>17 Healthcare Alliance?</p> <p>18 <b>A.</b> I am.</p> <p>19 <b>Q.</b> And the Advantage Care Network that preceded the</p> <p>20 Alliance, that was not a clinically integrated organization?</p> <p>21 <b>A.</b> It was not.</p> <p>22 <b>Q.</b> Right. So when you had contracts you wanted to</p> <p>23 enter into on behalf of the Alliance, somebody had to go out</p> <p>24 and do a messenger system with independent physicians to try</p> <p>25 to figure out whether they would agree to enter into that</p>
<p style="text-align: right;">1267</p> <p>1 contract; is that right?</p> <p>2 <b>A.</b> We are still using the messenger model, correct.</p> <p>3 <b>Q.</b> Even with the Alliance; right?</p> <p>4 <b>A.</b> Even with the Alliance at this point.</p> <p>5 <b>Q.</b> In fact, the move from the Advantage Care Network</p> <p>6 to the Alliance you basically characterized as just a name</p> <p>7 change; is that right?</p> <p>8 <b>A.</b> Correct, governance and name change.</p> <p>9 <b>Q.</b> Right. So when the name change was implemented,</p> <p>10 providers who were in ACN were just converted to becoming</p> <p>11 members of the Alliance; right?</p> <p>12 <b>A.</b> That's -- that's correct.</p> <p>13 <b>Q.</b> So you did not go out to St. Luke's physicians who</p> <p>14 were in ACN or others in ACN and ask them to affirmatively</p> <p>15 join the Alliance; correct?</p> <p>16 <b>A.</b> We actually did send a letter to every member of</p> <p>17 ACN letting them know what we were doing.</p> <p>18 <b>Q.</b> Right. But what you were doing was saying: You</p> <p>19 will -- you will automatically become a member of the</p> <p>20 Alliance?</p> <p>21 <b>A.</b> Yes.</p> <p>22 <b>Q.</b> And the Alliance is not yet a clinically</p> <p>23 integrated organization; is that right?</p> <p>24 <b>A.</b> No. We were working on it, but not yet.</p> <p>25 <b>Q.</b> There is no target date for when that will occur?</p>	<p style="text-align: right;">1268</p> <p>1 <b>A.</b> No. Since last you and I talked, I think we've</p> <p>2 come up with a target date. We wanted it to be 18 to 24</p> <p>3 months ----</p> <p>4 THE COURT REPORTER: Would you please slow down.</p> <p>5 THE WITNESS: I'm sorry.</p> <p>6 We didn't have a target last time you and I talked, but</p> <p>7 now we have established that we want it ready about 18 to 24</p> <p>8 months from when we started. We started about a year ago,</p> <p>9 so we are 6 to 12 months away.</p> <p>10 BY MR. STEIN:</p> <p>11 <b>Q.</b> And that's a target you said you came up with</p> <p>12 after I asked you that question in your deposition?</p> <p>13 <b>A.</b> Yes.</p> <p>14 <b>Q.</b> Is that a target that's going to be met? You will</p> <p>15 be fully clinically integrated a year from now?</p> <p>16 <b>A.</b> Yes, it will be.</p> <p>17 <b>Q.</b> And how do you know that?</p> <p>18 <b>A.</b> Well, we have got a plan. We have got a work plan</p> <p>19 to do that. We're working hard on that work plan, and I</p> <p>20 think we will achieve it.</p> <p>21 <b>Q.</b> Now, the Alliance doesn't have any results to</p> <p>22 show -- results at this point in terms of whether it's been</p> <p>23 able to achieve cost efficiencies or quality improvements;</p> <p>24 is that correct?</p> <p>25 <b>A.</b> It is a new organization. We have -- for example,</p>

<p style="text-align: right;">1269</p> <p>1 we did have a quality incentive with Micron that we worked</p> <p>2 with last year that we actually received an incentive</p> <p>3 payment on because we were able to achieve that -- those</p> <p>4 quality incentives. So we have some minor ones but no major</p> <p>5 ones at this point.</p> <p>6 Q. And last year, that was the first time you had a</p> <p>7 quality component like that with Micron?</p> <p>8 A. Yes.</p> <p>9 Q. Roughly, what are the total revenues that</p> <p>10 Saint Al's gets from the Micron contract, that 20 percent of</p> <p>11 the business you referred to?</p> <p>12 A. You want total revenue or total profit, you said?</p> <p>13 Q. Total revenue.</p> <p>14 A. Total revenue? It probably -- and I do not know</p> <p>15 the answer for sure. It is probably between 30 and 40</p> <p>16 million, somewhere in there.</p> <p>17 Q. What was the total amount at stake under this</p> <p>18 quality incentive that was implemented last year?</p> <p>19 A. \$600,000.</p> <p>20 Q. Has Saltzer been as important to Saint Al's during</p> <p>21 the entire time that you've been there as it is today?</p> <p>22 A. Yes.</p> <p>23 Q. And when you were -- you were involved in the</p> <p>24 efforts to develop the criteria for determining who would be</p> <p>25 allowed to join the Alliance; is that right?</p>	<p style="text-align: right;">1270</p> <p>1 A. I was in the final decision-making group.</p> <p>2 Q. So can we put up Trial Exhibit 2071.</p> <p>3 Mr. Petersen, this is an email from Anne Sawyer at</p> <p>4 Saint Alphonsus to a number of individuals, including</p> <p>5 yourself, dated August 10 of 2012; is that correct?</p> <p>6 A. Yes. That's what it says.</p> <p>7 Q. So -- and this document was transmitting, if we go</p> <p>8 to the second page, a proposal that was being circulated to</p> <p>9 determine who would be invited to join the Alliance. Do you</p> <p>10 see that?</p> <p>11 A. Yes. It was proposed criteria.</p> <p>12 Q. Okay. And this is a document that was -- that was</p> <p>13 created by Saint Alphonsus employees; right?</p> <p>14 A. I assume so. I don't know who created the</p> <p>15 document. I can't see it, but --</p> <p>16 Q. It doesn't -- it doesn't identify it in here. I</p> <p>17 guess I should ask: Do you know who created this document?</p> <p>18 A. I don't know who created this specific document,</p> <p>19 no.</p> <p>20 Q. So if we call up item 1, the proposed criteria</p> <p>21 states at least in part, 1(a), "All who are in ACN except:</p> <p>22 Physicians and NPPs who are employed by or are in a PSA with</p> <p>23 St. Luke's Health System but they can be admitted by</p> <p>24 exception."</p> <p>25 And "NPP," that would be a nurse practitioner?</p>
<p style="text-align: right;">1271</p> <p>1 A. Yes.</p> <p>2 Q. And so am I correct in understanding that what</p> <p>3 this would mean is that the default rule for invitations to</p> <p>4 join the Alliance would be that if you were employed or in a</p> <p>5 PSA arrangement with St. Luke's, you would not be invited,</p> <p>6 although you could be invited by exception; is that right?</p> <p>7 A. Our final document does not say that. This was a</p> <p>8 proposed discussion document.</p> <p>9 Q. I understand, but that's what the proposal was;</p> <p>10 correct?</p> <p>11 A. That was the proposal but not what we finally</p> <p>12 decided.</p> <p>13 Q. And if we go to page 2, call out the footnotes.</p> <p>14 Footnote 3 states, "Saltzer will not specifically be</p> <p>15 addressed. The" -- I think that means "they" -- "will be</p> <p>16 invited unless they violate one of the other inclusion</p> <p>17 criteria."</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. And those inclusion criteria would include not</p> <p>21 being employed or in a PSA relationship with St. Luke's;</p> <p>22 correct?</p> <p>23 A. In the proposed document but, again, not what we</p> <p>24 actually decided.</p> <p>25 Q. Well, how could -- how could anyone who is working</p>	<p style="text-align: right;">1272</p> <p>1 for Saint Al's even consider a proposal that would exclude</p> <p>2 Saltzer from the Alliance if it's as important as you say it</p> <p>3 is?</p> <p>4 A. Well, I'm assuming the person who prepared that</p> <p>5 may not have understood that importance.</p> <p>6 Q. Just to go back for a second, the Micron</p> <p>7 contract -- I'm sorry -- the Micron arrangement that</p> <p>8 involved quality, how would you characterize that, that</p> <p>9 contract?</p> <p>10 A. It was quality incentive.</p> <p>11 Q. Okay. And who was eligible for that? Was it --</p> <p>12 was it just SAMG doctors?</p> <p>13 A. That specific one was before the Alliance was</p> <p>14 totally formed, so it was just SAMG doctors.</p> <p>15 Q. Okay. So that didn't involve independent</p> <p>16 physicians? It only involved --</p> <p>17 A. That one did not involve independent physicians.</p> <p>18 Q. It just involved Saint Al's-employed physicians?</p> <p>19 A. Yes.</p> <p>20 Q. You said Micron has recently asked you for a</p> <p>21 number of bids for alternative scenarios; is that right?</p> <p>22 A. They have not asked bids. We have had</p> <p>23 discussions.</p> <p>24 Q. Okay. And, in fact, you understand that</p> <p>25 St. Luke's has competed for the Micron contract every time</p>

<p style="text-align: right;">1273</p> <p>1 that it's come up; isn't that right?</p> <p>2 <b>A. I believe it only came up once, yes.</b></p> <p>3 <b>Q.</b> But you understand that St. Luke's is competing to</p> <p>4 get that contract; right?</p> <p>5 <b>A. I would assume so. I don't know that.</b></p> <p>6 MR. STEIN: Your Honor, I don't think I have any</p> <p>7 further questions at this time.</p> <p>8 THE COURT: Mr. Ettinger.</p> <p>9 MR. ETTINGER: No questions, Your Honor.</p> <p>10 THE COURT: Mr. Petersen, you may step down.</p> <p>11 Thank you.</p> <p>12 THE WITNESS: Thank you.</p> <p>13 THE COURT: With those new hips, watch that.</p> <p>14 There is a step right there that I would not like to see you</p> <p>15 miss.</p> <p>16 Call your next witness.</p> <p>17 MS. DUKE: Your Honor, we're going to have Kathy</p> <p>18 Moore by video.</p> <p>19 THE COURT: Can we bring the public back in?</p> <p>20 MS. DUKE: Yes, we can bring the public back in.</p> <p>21 And there were a couple of portions that were highlighted</p> <p>22 AEO by St. Luke's, but we can just -- if you are all right</p> <p>23 with continuing to do where I just mute it and you read for</p> <p>24 a page or so.</p> <p>25 THE COURT: Just as long as you remind me, yes.</p>	<p style="text-align: right;">1274</p> <p>1 MS. DUKE: Yep.</p> <p>2 ***** COURTROOM OPEN TO THE PUBLIC *****</p> <p>3 (Testimony of Kathy Deanne Moore via video</p> <p>4 deposition.)</p> <p>5 (Video deposition paused.)</p> <p>6 MR. WILSON: This next exhibit, 1118, is AEO. So</p> <p>7 if we could please black out the screen. The testimony,</p> <p>8 however, has not been designated.</p> <p>9 THE COURT: All right.</p> <p>10 (Video deposition of Kathy Moore resumed.)</p> <p>11 MR. WILSON: This is not AEO, Your Honor.</p> <p>12 (Video deposition paused.)</p> <p>13 MS. DUKE: Your Honor, if we could blank the</p> <p>14 screen.</p> <p>15 THE COURT: Yes.</p> <p>16 MS. DUKE: We're into an AEO portion. I am also</p> <p>17 going to mute the testimony so that you can read it on the</p> <p>18 monitor.</p> <p>19 THE COURT: Very good. Yes.</p> <p>20 (Video deposition of Kathy Moore resumed.)</p> <p>21 (Video deposition paused.)</p> <p>22 MS. DUKE: Now, Your Honor, I can turn the volume</p> <p>23 back on, but if we could keep the screen --</p> <p>24 THE COURT: Yes. Thank you.</p> <p>25 (Video deposition of Kathy Moore resumed.)</p>
<p style="text-align: right;">1275</p> <p>1 MS. DUKE: That's the conclusion of her portions,</p> <p>2 Your Honor. And I would go ahead and publish her transcript</p> <p>3 at this time. I will hand that to Ms. Gearhart at the</p> <p>4 conclusion of today's trial.</p> <p>5 THE COURT: Ms. Gearhart, if you'll track that and</p> <p>6 make sure we publish that when you have the original.</p> <p>7 There was one exhibit, 1973, that I think was mentioned</p> <p>8 and not admitted previously.</p> <p>9 MS. DUKE: Yes, Your Honor.</p> <p>10 THE COURT: There were objections as to</p> <p>11 timeliness, foundation, and relevance.</p> <p>12 MR. KEITH: Your Honor, we withdraw those</p> <p>13 objections, although we -- it's -- this is a notebook with I</p> <p>14 think a hundred pages or so of material as to which the</p> <p>15 plaintiffs focused on one page or two pages. And, you know,</p> <p>16 we haven't looked through every page of that document to</p> <p>17 determine if there was hearsay.</p> <p>18 THE COURT: Okay. I certainly don't intend to</p> <p>19 review every page myself unless I am directed to do so</p> <p>20 through the trial briefs. And I assume, if so, any further</p> <p>21 objections can be noted at that time. But based upon what's</p> <p>22 been shown, certainly we won't look beyond that unless we're</p> <p>23 directed -- well, unless it's suggested in the brief that</p> <p>24 there is something else in the document which is relevant.</p> <p>25 All right.</p>	<p style="text-align: right;">1276</p> <p>1 MR. KEITH: With that, Your Honor, we'll withdraw.</p> <p>2 THE COURT: All right. We will admit Exhibit</p> <p>3 1973. And, of course, counsel is free to ask the court to</p> <p>4 reconsider if that becomes necessary, but it is admitted for</p> <p>5 our purposes here today.</p> <p>6 (Plaintiffs' Exhibit No. 1973 admitted.)</p> <p>7 THE COURT: Call your next witness.</p> <p>8 MS. DUKE: Thank you, Your Honor. We're going to</p> <p>9 also play excerpts from the deposition of Gregory Orr. And</p> <p>10 much of that is -- actually, I think all of that except for</p> <p>11 potentially one of the exhibits is open.</p> <p>12 THE COURT: All right.</p> <p>13 MS. DUKE: Thank you.</p> <p>14 MR. WILSON: The screen is still blank.</p> <p>15 (Testimony of Gregory Dean Orr via video deposition.)</p> <p>16 MS. DUKE: Okay. Your Honor, that's the</p> <p>17 conclusion of Gregory Orr.</p> <p>18 THE COURT: Which exhibits? I had 1015. Is there</p> <p>19 any other exhibits that have not already been admitted?</p> <p>20 1015 has been.</p> <p>21 MS. DUKE: 1009, 1015, and 1017 were all</p> <p>22 referenced and shown, and they have all been admitted.</p> <p>23 THE COURT: Very well. All right. Call your next</p> <p>24 witness.</p> <p>25 MS. DUKE: Thank you, Your Honor. Chris Roth by</p>

<p style="text-align: right;">1277</p> <p>1 video.</p> <p>2 And, Your Honor, with Mr. Roth, we can start open, but</p> <p>3 then it goes into a fair amount of AEO. It could then open</p> <p>4 up for a few minutes, and then the rest is all AEO.</p> <p>5 THE COURT: Then I think we will probably clear</p> <p>6 the courtroom at that point, if you'll let me know.</p> <p>7 (Testimony of Christopher William Roth via video</p> <p>8 deposition.)</p> <p>9 (Video deposition paused.)</p> <p>10 MS. DUKE: Your Honor, at this point, we will need</p> <p>11 to clear the courtroom for the attorneys' eyes only.</p> <p>12 THE COURT: All right. Other than St. Luke's --</p> <p>13 MR. WILSON: Correct.</p> <p>14 THE COURT: -- St. Luke's employees.</p> <p>15 MS. DUKE: Actually, St. Luke's employees for the</p> <p>16 first chunk need to not be part of this, as well. Well,</p> <p>17 it's -- it's just a different color category. We're fine</p> <p>18 with St. Luke's.</p> <p>19 THE COURT: All right.</p> <p>20 ***** COURTROOM CLOSED TO THE PUBLIC *****</p> <p>21 (Video deposition resumed.)</p> <p>22 (Video deposition paused.)</p> <p>23 MS. DUKE: Your Honor, I'm not sure --</p> <p>24 THE COURT: This is probably --</p> <p>25 MS. DUKE: We have about ten minutes left, so --</p>	<p style="text-align: right;">1278</p> <p>1 THE COURT: Yes. This is probably a good breaking</p> <p>2 point. I was trying to get actually a few more minutes</p> <p>3 because I think we are running -- in terms of the five hours</p> <p>4 per day we tried to promise you, I think we need to catch up</p> <p>5 about an hour. So we may, perhaps tomorrow, go ten minutes</p> <p>6 over a bit, something like that. And we may continue that</p> <p>7 whenever I don't have another hearing in the afternoon, to</p> <p>8 try to do a little bit of catchup.</p> <p>9 Counsel, let's reconvene tomorrow morning --</p> <p>10 Mr. Sinclair?</p> <p>11 MR. SINCLAIR: One note for the record, Your</p> <p>12 Honor. Mr. Schafer pointed out to me that in the deposition</p> <p>13 transcript on page 50 at line 20, it says: In fact, we,</p> <p>14 quote "collectively compete." Where, in fact, if you listen</p> <p>15 to the audio, it says "we effectively compete." I think if</p> <p>16 they checked the audio to the transcript, it's going to be</p> <p>17 incorrect.</p> <p>18 THE COURT: We'll make that notation. Thank you</p> <p>19 very much, Mr. Sinclair and Mr. Schafer, for catching that.</p> <p>20 Counsel, we'll be in recess, then, until 8:30</p> <p>21 tomorrow morning.</p> <p>22 MR. BIERIG: Your Honor, before we go on recess,</p> <p>23 may I just ask Your Honor what the plans are for plaintiffs</p> <p>24 to tell us when they plan to rest? I thought --</p> <p>25 THE COURT: Well, my understanding was they were</p>
<p style="text-align: right;">1279</p> <p>1 going to tell you tonight what your thoughts are. What I</p> <p>2 advised Mr. Metcalf to communicate with counsel is that it</p> <p>3 is impossible to be absolutely certain because they can't</p> <p>4 control cross-examination, for example. But, on the other</p> <p>5 hand, I do think that plaintiffs need in good faith to give</p> <p>6 almost an hourly, if not hourly certainly a daily, update on</p> <p>7 where you are.</p> <p>8 What I had suggested is that St. Luke's ought to have</p> <p>9 one or two witnesses with some flexibility in their schedule</p> <p>10 to begin Monday morning, so that if we do run over, it will</p> <p>11 not inconvenience others.</p> <p>12 I know that may affect the order in which you present</p> <p>13 your witnesses, but it's probably an unavoidable casualty to</p> <p>14 the time pressures we have and the inability of, I think,</p> <p>15 either party to predict with certainty when they can</p> <p>16 conclude.</p> <p>17 My understanding is that the plaintiffs were trying</p> <p>18 very hard to close by Thursday at noon, which would be our</p> <p>19 last day of court this week; and that still is the game</p> <p>20 plan, but that if there is any modification in that, you</p> <p>21 will keep us posted.</p> <p>22 Mr. Wilson, did you want to add something?</p> <p>23 MR. WILSON: No. I think that is still the plan.</p> <p>24 If anything, we will have an hour, perhaps two at the most,</p> <p>25 of video testimony, which is obviously flexible. So we can</p>	<p style="text-align: right;">1280</p> <p>1 work with the defense on that.</p> <p>2 THE COURT: Now, I would not be opposed -- it's</p> <p>3 not exactly what I want to do over the weekend, but if there</p> <p>4 is no need to even play it here in court, I might be able to</p> <p>5 even just put it in my laptop and listen to it over the</p> <p>6 weekend to expedite the process a bit.</p> <p>7 So you can think about that, see if there is some</p> <p>8 concern. You would need to kind of queue or tee that up in</p> <p>9 terms of the objections I may need to resolve on exhibits,</p> <p>10 things of that sort. I'm not -- if there is an objection,</p> <p>11 we can, I guess, arm wrestle over that. But that might be a</p> <p>12 solution to the scheduling problem so that we have even more</p> <p>13 certainty that St. Luke's can start Monday morning at 8:30.</p> <p>14 MR. BIERIG: Thank you, Your Honor.</p> <p>15 THE COURT: We'll be in recess.</p> <p>16 (Court recessed at 2:38 p.m.)</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

REPORTER'S CERTIFICATE

I, Tamara I. Hohenleitner, Official Court Reporter,  
County of Ada, State of Idaho, hereby certify:

That I am the reporter who transcribed the proceedings  
had in the above-entitled action in machine shorthand and  
thereafter the same was reduced into typewriting under my  
direct supervision; and

That the foregoing transcript contains a full, true,  
and accurate record of the proceedings had in the above and  
foregoing cause, which was heard at Boise, Idaho.

IN WITNESS WHEREOF, I have hereunto set my hand  
October 31, 2013.

-s-

Tamara I. Hohenleitner  
Official Court Reporter  
CSR No. 619